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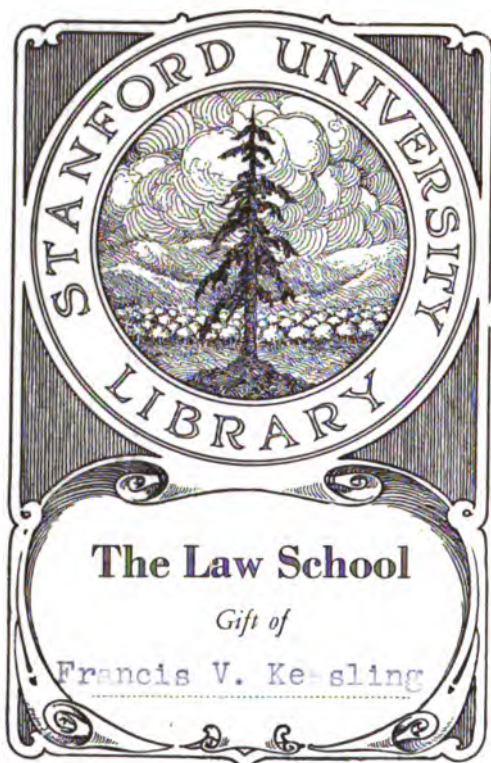
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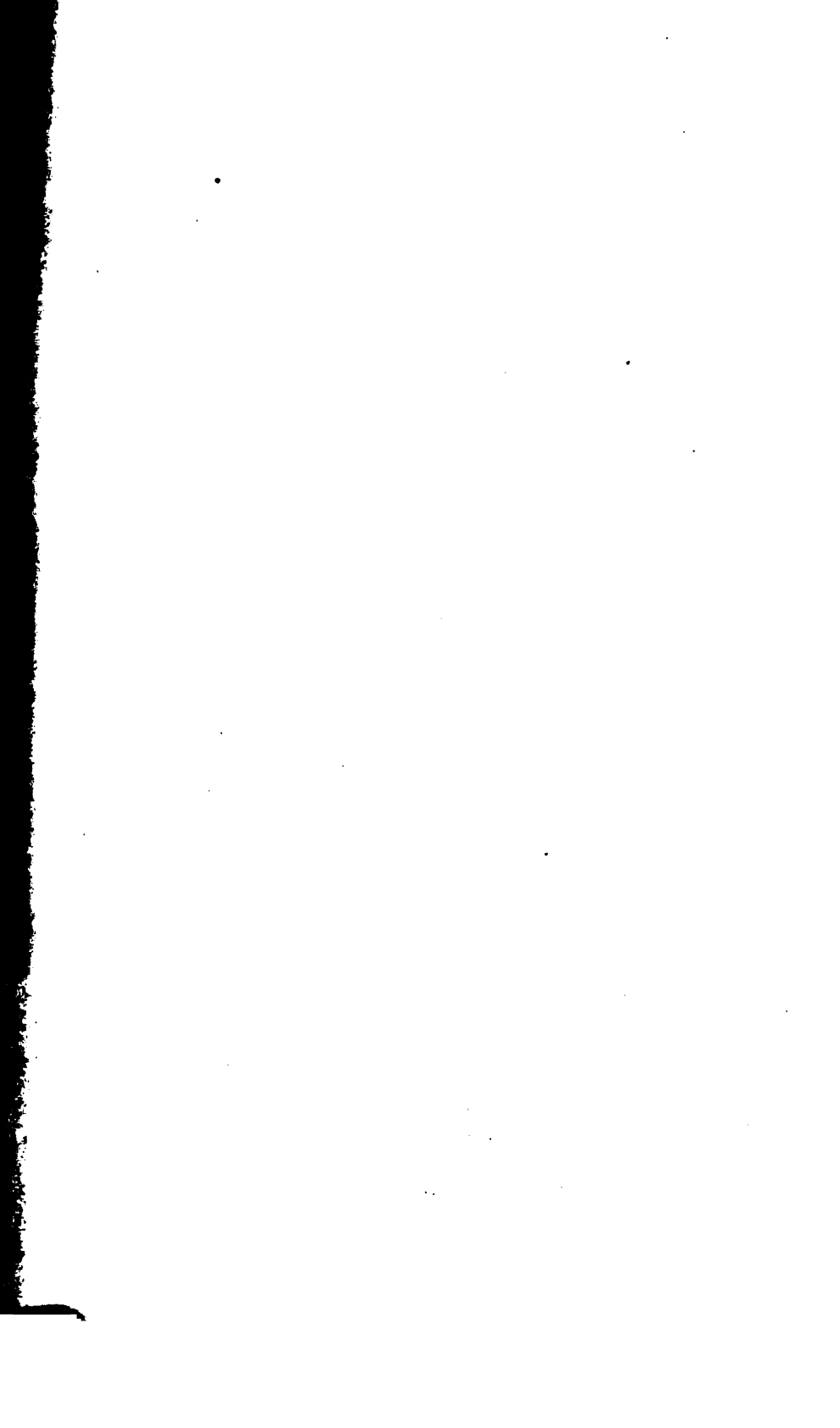
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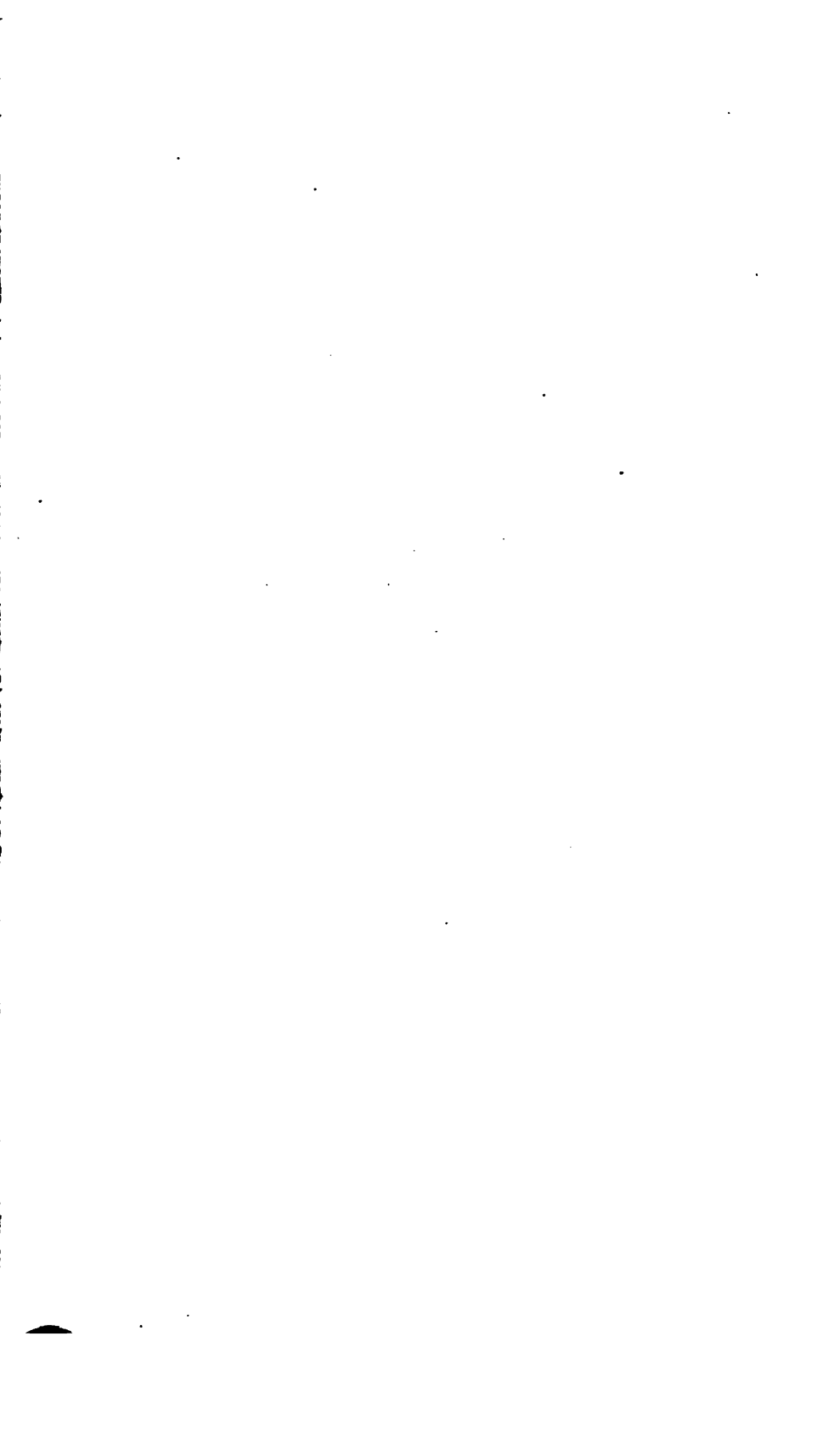
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THE

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OF THE

STATE OF CALIFORNIA.

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ANNOTATED BY

CREED HAYMOND AND JOHN C. BURCH,

OF THE

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THE  
POLITICAL CODE  
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PART III--CONTINUED.

1—Vol. II.



THE  
POLITICAL CODE

OF THE  
STATE OF CALIFORNIA.

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PART III—CONTINUED.

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TITLE IX.

REVENUE.

- CHAPTER I. *Property liable to taxation.*
- II. *Definitions.*
  - III. *Assessment of property.*
  - IV. *Equalization of taxes.*
  - V. *Levy of taxes.*
  - VI. *Duties of the Auditor in relation to revenue.*
  - VII. *Collection of property taxes.*
  - VIII. *Collection of taxes by the Assessor on certain personal property.*
  - IX. *Poll taxes.*
  - X. *Settlements with the Controller and payments into State Treasury.*

## CHAPTER I.

## PROPERTY LIABLE TO TAXATION.

## SECTION 3607. Property subject to taxation.

Property  
subject to  
taxation.

3607. All property within this State, except the property of the United States, of the State, and of municipal corporations, is subject to taxation.

NOTE.—The right to tax is a sovereign power and only limited in its extent by the State Constitution.—*Beals vs. Amador Co.*, 35 Cal., p. 624. No property is exempt under the Constitution.—*People vs. Gerke*, 35 Cal., p. 677. Section 8 of Article I of the State Constitution, concluding with these words, “nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation,” has no application whatever to proceedings instituted under the revenue laws of the State to collect from its citizens contributions for the support and conduct of the State Government. So held in *High vs. Shoemaker*, 22 Cal., p. 370, referring to *Blackwell on tax titles*; cases cited, pp. 40, 41. The exception in the text is supported in *People vs. Doe, G.*, 36 Cal., p. 220.

JURISDICTION TO TAX.—Taxes are a portion that each individual gives of his property in order to secure the perfect enjoyment of the remainder; and the owner of property within the limits of any State, no matter whether it be real or personal, and no matter where he has his domicile, since he is entitled in respect to it, to the protection of the State, is liable to taxes levied by such State.—*Duer vs. Small*, 7 American Law Register, p. 500; and see *Bluntschli Droit. Intern. Codifié*, Sec. 377. There are authorities, however, to the contrary, on the ground that double taxation, which this rule allows, is inequitable.—*People ex rel. Hoyt vs. Commissioners of Taxes*, 23 New York Rep., p. 224. And see report of Wells and others, Commissioners on *local taxation* in New York (Harper's ed.), pp. 43, 44, 65.

TAXES ON THE PERSON can only be imposed by the Government in which the person is domiciled. *Bluntschli (Dr. Int. Cod., Sec. 378.)* qualifies this by adding that the country of origin may levy certain taxes on its own members domiciled abroad (for example, tax for the assistance of the poor), but that the State of the

domicile is under no obligation in reference to the collection thereof.

**CORPORATIONS.**—The interests of owners of shares in the capital of a corporation are taxable as the personal property of such owners. It is usual in some countries to tax foreign corporations more heavily than domestic corporations. By the American law, the property of the corporations is distinguished from the interests of its shareholders for the purposes of taxation, as well as for other purposes. A State has no power to tax the interest of bonds (secured in this case by mortgage) given by a railway corporation, and binding every part of the road, when the road lies partially in another State; being one road owned by a company incorporated by the two States. The effect of allowing such tax would be to enable each State to tax property beyond its own limits.—*Railroad Company vs. Jackson*, 7 Wallace's U. S. Supreme Court Rep., p. 262. See Secs. 3640-3663, post. Upon considerations somewhat similar to those referred to, it may be suggested that shares in corporations, as distinguished from the property of the corporation, should not be taxed.—See Secs. 3640, 3641, post.

**SHIPPING** is taxable only by the Government whose character it bears. This is the rule laid down in *Hays vs. Pacific Mail Steamship Co.*, 17 Howard's U. S. Sup. Ct. Rep., p. 596, as applicable at least so long as the vessel gains no *situs* in the foreign State. See, also, *People ex rel. Hoyt vs. Commissioners on local taxation* (Harper's ed.), p. 45. See Secs. 3644-5-6, post.

**PROPERTY IN TRANSIT** between different jurisdictions, whether actually in motion or awaiting directions or means of transportation, is only taxable under ordinary revenue laws applicable to importation or exportation, under the exclusive control of Congress—being a commercial regulation. This rule we understand to be generally recognized. The power to tax property sent into a State, and lying there awaiting sale, seems clear, although the policy of it is questioned. Rep. of Wells and others, Commissioners, *on local taxation* (Harper's ed.), p. 45. See Sec. 3638, post. This note is frequently referred to under the sections of Chap. III, post.

**OUR STATE LEGISLATION** on the subject. The revenue system of the Code embraced in this Title will, it is hoped, prove a successful attempt to bring *system* out of *confusion*. It has been in force only a short time, and its authors and the Legislature adopting it have reason to congratulate themselves that so far at

least it has been received and acknowledged as a vast improvement upon former enactments. Though the State has had an existence of more than twenty years, the Courts have been left to grope among the odds and ends of crude legislation, unsystematized and illy digested, for something tangible and worthy the name of "method" upon one of the most important subjects of government—"taxation." It would be profitless, chronologically or otherwise, to recapitulate or refer to here the conflicting cases—necessarily very numerous—which our Supreme Court have been compelled to decide under former revenue laws. A few of the later cases, where these questions are all elaborately discussed, will disclose not only the necessity which existed for the change made in these laws, but will also give the foundation for the change, and by presenting the existing difficulties, point out to a certain degree the means of avoiding them which were employed in the preparation of this revenue system under the constitutional provisions governing the subject. The case of *The People vs. McCreery*, 34 Cal., p. 434, et seq., was an appeal from the District Court, Fifteenth Judicial District, City and County of San Francisco. This was an action by the people of the State against defendant to recover the sum of eight thousand one hundred and sixty-four dollars and fifty cents, alleged to be due for taxes on certain personal property, levied in the City and County of San Francisco, for the fiscal years 1865-6 and 1866-7. The personal property on which the taxes were levied consisted of one hundred and twenty-five thousand dollars loaned at interest by defendant McCreery to James Lick, and secured to be repaid by a deed of trust of certain real property situated on the corner of Sutter and Montgomery streets, known as the "Lick House." In the Court below the trial was by the Court without a jury, upon an agreed statement of facts, coupled with a stipulation that defendant could interpose any defense he might choose. The defendant had judgment, and plaintiff appealed therefrom and from an order denying a motion for a new trial. The other facts and the issues presented by the pleadings and on appeal are sufficiently stated in the opinion of the Court.

In the first portion of this decision Justice Rhodes disposes of questions arising from numerous specific enactments. The revenue law then existing classified all property subject to taxation, and attempted a complete enumeration, which, it will be observed, is not attempted in the text of Section 3607 of this Title, but

it declares simply that "all property is subject to taxation," with the exception of the property of the United States and the State. Justice Rhodes then, on p. 438, proceeds as follows:

"The counsel for the defendant hold, as we understand them, that the assessment roll was made under the provisions of the Act of May 9th, 1862 (Stats. 1862, p. 509), and of the Act of March 6th, 1863 (Stats. 1863, p. 35). We do not agree with the learned counsel in respect to the Act of 1862. An examination of the multitudinous Revenue Acts applicable to San Francisco—a part general and a part special, with provisions incongruous, conflicting, and sometimes absurd—is not so attended with pleasure that it will be unnecessarily undertaken. The result of our exploration is far from being satisfactory, for we are not sure that we are able to discover the particular provision applicable to any particular point in the controversy."

From these remarks of the Court, as well as from those which immediately follow, the justice of our language *supra* in this note, as to the difficulties of the Courts, is manifest. The Court proceeds:

"The first section of the Act of May 9th, 1862, prescribing the manner in which the assessment roll of personal property shall be made by the Assessor—directing him to enter the names of the persons, etc., assessed, and the amount of the tax, without requiring him to enter the property or its valuation—probably repealed all previous provisions defining the manner of making such roll; but this provision, whatever may have been its meaning or effect, was superseded by Section 1 of the Act of March 6th, 1863 (Stats. 1863, p. 35), amendatory of the Act of 1859 (Stats. 1859, p. 346), which latter Act was amendatory of the general Revenue Act of 1857—the Act which, with its amendments, became applicable to San Francisco alone. Section 4 of the Act of 1857, as amended in 1863, provides for the making of the assessment roll of personal property, and directs the Assessor, among other things, to set down in a separate column 'all personal property taxable to each [person, etc.] under the classification provided for in Section 2 of this Act.' The second section of the Act of 1859 is an amendment of the third section of the Act of 1857. The last amendment of the third section of the Act of 1857 which we find was passed in 1862 (Stats. 1862, p. 57). The section divides personal property into nine classes. The property assessed in this case falls within the fourth class, to wit: 'All money at interest or loaned, whether secured by pledge,

mortgage, or otherwise; all solvent debts exceeding what may be due from such person, corporation, association, or firm.' The defendant contends that as this class is divisible into seven species of property, it was the duty of the Assessor to state the particular species of the property which may be entered as of this class, together with its valuation; and in support of this position reliance is placed on *Falkner v. Hunt*, 16 Cal., p. 167. At the time the assessment was made, which was under consideration in *Falkner v. Hunt*, Section 3 of the Act of 1857 did not prescribe any classification of personal property, and the Court held that it must be described in the assessment roll by its different species in manner defined in Section 5 of the Act. One object of the amendment of Section 3, in 1862, was to enable the taxpayer and the Assessor to group the property under the classification therein specified; at least, if that was not the object, we are at a loss to understand what was the purpose of the classification. A description, with the minuteness and particularity contended for by the defendant, would be prolix and cumbersome, and would serve no useful purpose. Take the second class: 'All stocks of goods on hand, all goods, wares, merchandise, and chattels of every description.' The same rule that would require the Assessor to specify in different items, money loaned secured by pledge, money loaned secured by mortgage, money loaned secured by deed of trust, or by the obligation of a third person, or other security, would require the Assessor to give the description of each chattel falling within that class which was not included within 'stocks of goods.' The Legislature could not have intended so useless a proceeding. The only reason why a particular description of the property assessed may be required by the person assessed, is that he may know whether it has been properly valued. It is admitted 'that the only money loaned out by the defendant, and the only solvent debts due him, during said fiscal years, was the one hundred and twenty-five thousand dollars, for the taxes upon which this suit is brought, and is the one hundred and twenty-five thousand dollars loaned by the defendant to one James Lick, secured to be paid by a deed of trust,' etc. As a matter of fact, the defendant was not misled, and could be under no misapprehension as to the meaning of the assessment. (*People vs. Home Insurance Company*, 29 Cal., p. 549; *People vs. Empire Gold and Silver Mining Company*, 33 Cal., p. 171.) It certainly was money loaned, and it was also a solvent debt.



"THE TERM 'SOLVENT DEBT' duplicates all the other species of property mentioned in that class, in the same manner that 'chattels' does all the personal property mentioned in the section. Treating the property as a solvent debt, we see no necessity for adding that the amount is in excess of the owner's indebtedness, for it is only the excess that is taxable. But regarding money loaned as the more specific and proper designation, was it necessary also to state the security? Suppose that, instead of being included in one loan, the one hundred and twenty-five thousand dollars had in fact been loaned to one hundred and twenty-five different persons, in sums of one thousand dollars each, and that each borrower had given security, amongst which was to be found all the forms indicated by the words of the statute: 'Whether secured by pledge, mortgage, or otherwise'—if 'otherwise' means other forms of security. The position taken by the defendant would require the Assessor to state each debt and the nature of the security. This would increase the roll to dimensions beyond all reason, and we think to very little useful purpose. In *Falkner vs. Hunt* it is said that 'money loaned' would be a sufficient description. And we think that is the more apparent since property is classified by the statute, and the taxpayer is required to make his statement in that form. The classification would be useless unless brief mention of the property in the roll would be sufficient.

"If there is still any doubt about the sufficiency of the description under the provisions of the statute, the curative Act we first referred to corrects all errors of mere mode and form—the roll showing that the property of the defendant was entered and valued. The property is described in the roll, with its valuation, as follows: 'Money,' valuation, '5,000.' 'Money loaned,' valuation, '125,000,' and over the column of valuation is the word 'dollars,' indicating the meaning of the figures in the column. The requirement of the Constitution that the valuation shall be made by the Assessor, does not, necessarily, imply that a minute or full description shall be given in the roll. The terms and manner of description are the proper subject of legislative action, and may be made as general as it was by the Revenue Act of 1861—'personal property'—which was upheld in *People vs. Sneath*, 28 Cal., p. 612. This disposes of all the points in respect to the assessment for 1865-6, which we think it necessary to notice."

The Court proceeds, on p. 445, et seq., as follows:

**"OBJECTION IS TAKEN TO THE ACTION OF THE BOARD OF EQUALIZATION.**—Sec. 2 of the Act of 1862 (page 509) provides that the Board 'shall meet on the first Monday in June in each year for the correction of errors in the assessment of personal property, and shall continue in session from time to time until all such errors brought to their notice shall be corrected; provided, however, they shall not sit after the third Monday in June.' The Board met on the first and the third Mondays of June. Between those days, as we infer from the record, a committee of the Board received applications for the correction of the assessment, and perhaps took the testimony, if any was offered. We see no objection to such a course, calculated as it was to facilitate the dispatch of business. The Board, as was necessary and proper, finally acted on the applications and ordered the corrections to be made on the assessment roll. The Act does not require the Board to remain in session during the whole period of its existence. The failure to sit on any day, or any number of days, less than the whole, is productive of no injury to a person who is assessed, unless he has cause to complain of the assessment, and unless it also appears that he failed to have the errors corrected because he could not get a hearing before the Board.

**"THE VALUATION,** as we have remarked, is to be made by the Assessor, and the province of the Board is to correct errors by adding to or deducting from the valuation, when application therefor is made. It does not appear that, when the Board closed its session, any valuation was erroneous. The objection, in our opinion, is untenable. The counsel for the plaintiff suggests that 'this case presents a fit opportunity' for the Court 'incidentally to direct the attention of the next Legislature to the necessity of reducing the jargon of the various laws into one legible and intelligible statute on the subject of revenue.' The learned counsel are doubtless laboring under the delusion that the revenue laws should be general and uniform in their operation. But a cursory glance at the legislation upon this subject will disclose their error. It has been found necessary to devise almost as many different revenue systems as there are counties in the State, and frequently they will suffice for only one year. It has been found necessary to provide different times and modes for the performance of official services under the revenue laws; and in one instance the necessities of the occasion were

such that the Board of Equalization of one county was required to commence its session *after* the time when the Auditor is required to deliver the duplicate assessment roll to the Tax Collector. We must decline to accede to the request. After having given the Revenue Acts a thorough investigation no one will need any suggestions from us urging their revision.

“The defendant’s counsel present two questions of great moment. They relate to double taxation, and the constitutionality of the Revenue Laws. It is apparent that the question, whether the assessment against the defendant, of the sum of money loaned, under the existing circumstances, amounts to double taxation, does not legitimately arise upon the facts of the case. While the defendant held the money, which he afterwards loaned to Lick, he was taxable for that sum, and when he passed the money to Lick upon making the loan, and took Lick’s obligation to pay the same, secured by a deed of trust or other adequate security, he certainly did not divest himself of so much property. He possessed the same amount of property that he held before the loan was made. Its form only was changed. And so in all cases of loans. The lender owns the debt, and the debt is property, its value depending on the sufficiency of the security, if there be security, and the ability of the borrower to pay the debt. The holder of the debt is taxable upon the value of the debt. If the property of the borrower is assessed at its full value, without any deduction for what he owes, whether its payment is secured by any lien or charge upon his property or not, perhaps he may complain of undue or double taxation; and it seems that there is no difference, in this respect, whether the lender holds only the promise of the borrower, which may be enforced against his property by proper legal proceedings, or has a lien upon his real or personal property by judgment or the levy of an execution, or whether he has a specific lien by virtue of a mortgage, pledge, deed of trust, etc. But it is useless for us to express an opinion upon these questions so far as they relate to the borrower, for it would be a mere *obiter dictum*. The lender has no legal cause to complain that the borrower suffers the wrong of double taxation, or of being taxed for more than the value of his property after deducting the liens, charges, or incumbrances thereon. A decision in this case of questions of that character would not have the force of authority.

“Another question, and one of much greater impor-

tance under our present revenue system, does arise in this case. The defendant objects to the tax on the ground 'that the Legislature having, in defiance of constitutional requirements, imposed the burden of taxation upon a portion only of the property in the State, and expressly relieved a large portion from taxation, the law is neither equal nor uniform in its operation, does not tax 'all the property in the State,' and is therefore void.' The section of the Constitution referred to is Sec. 13 of Article XI, and is as follows:

"TAXATION SHALL BE EQUAL AND UNIFORM THROUGHOUT THE STATE.—All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated.' The first clause of the section was considered by this Court in *The People vs. Naglee*, 1 Cal., p. 252, which was an action instituted to test the constitutionality of the law of this State, requiring foreigners to pay a license fee for the privilege of working the gold mines upon the public lands in this State. It was there held that this clause, when taken in connection with the clause following it, must be construed as limited to direct taxes upon property; and it was considered that the statute in question was unaffected by that clause of the Constitution—for the statute did not levy or assess a tax upon property, but required a certain license fee to be paid by those of the specified class, who should pursue the designated business.

"The same question was presented in *People vs. Coleman*, 4 Cal., p. 46. Two actions were brought, the one to recover the penalties imposed by the Revenue Act of 1853 on auctioneers for selling property without license, and the other to recover penalties imposed by the same Act on persons selling goods consigned for sale from without the State; and both cases were considered together. The authority of *People vs. Naglee* was recognized, and it was held, that the first clause of the section applied to taxes upon property, and not upon trades, professions, or occupations, such taxes being in the nature of license taxes. This may be accepted as the correct construction of that clause; or rather, without expressing any opinion as to its applicability to taxes imposed upon persons, whether as poll taxes or license taxes, we accept as correct the construction, that the clause does apply to taxes upon

property. The Court, after disposing of the first clause of the section, proceeded to construe the second, and the conclusion reached was, that the clause did not limit or restrict the power of the Legislature so as to prevent it from exempting from taxation such property as in its discretion it might think proper.

“This point was directly presented in *High vs. Shoemaker*, 22 Cal., p. 363, and it was held ‘that the omission to tax a portion of the land in the State does not render the Revenue Act of 1857 void.’ The decision was based upon the authority of *The People vs. Coleman*, and the reasoning in that case, without entering anew upon an analysis or construction of the section. There are no other cases in this Court bearing directly upon this question; and as the latter case, *High vs. Shoemaker*, rests entirely upon the case of *People vs. Coleman*, and the reasons upon which it is placed, we will proceed to the examination of that case, and will give our construction of that section of the Constitution.

“In each of the cases considered on that appeal the question related only to a tax upon business—a tax in the nature of a license tax—and it was so considered by the Court in delivering their opinion. In the case of the sale of consigned goods there were some features that resembled a tax upon property, but the Court treated it as a tax upon the business of the consignees. The first clause of the section, ‘Taxation shall be equal and uniform throughout the State,’ was necessarily involved in the discussion, and if that clause should be considered applicable to taxes of that character, the Court would be bound to declare the Act void so far as it levied those taxes. But, as already stated, it was held that the clause applied to taxes upon property only, and consequently it had no application to taxes upon persons, trades, professions, and business.

“The question as to the construction of the section in its application to taxes upon property—as to whether it limited or in any manner restricted the power of the Legislature—was not involved in the case in any manner whatsoever, and all that was said upon that point must, in our opinion, be regarded as *obiter dicta*. We have this point established by these cases (*The People vs. Naglee* and *The People vs. Coleman*), that the clause—‘Taxation shall be equal and uniform throughout the State’—applies to taxes upon property; and it may be added that we have never heard this proposition doubted by any one. At the time of the adoption of the Constitution of this State no provision

identical with that of the section before us was to be found in the Constitution of any other State.

"The Constitution of Missouri provides 'that all property subject to taxation in this State shall be taxed in proportion to its value.' In construing the language of this section, the question at once presents itself as to the word 'subject,' whether the property to be taxed was all the property within the State, over which the Government of the State had jurisdiction, or only such property as the Legislature might in its discretion subject to taxation.

"These questions were very elaborately discussed in *Crow et al. vs. The State of Missouri*, 14 Mo., p. 237, and a majority of the Court were of the opinion that the first was the meaning of the term. This matter is alluded to here merely to say that in the section of our Constitution there is no such word of doubtful import.

"The section relating to taxation in our Constitution was taken, with certain important modifications, from that of Texas. The twenty-seventh section of Article VII of Texas is as follows: 'Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except such property as two thirds of both Houses of the Legislature may think proper to exempt from taxation. The Legislature shall have power to levy an income tax and to tax all persons pursuing any occupation, trade, or profession; provided, that the term 'occupation' shall not be construed to apply to pursuits either agricultural or mechanical.' That section was framed in full view of the principle that the power of the Legislature over the subject of taxation of property is plenary, except as restricted by constitutional limitations. That portion of the section which corresponds with the first portion of the section in our Constitution was not, therefore, intended as a grant of power to the Legislature; nor was it intended as an affirmation of a power recognized and admitted by all as possessed by the Legislature. The language is not expressive of such an idea. It must have been intended as a limitation of power. This becomes manifest, and, we think, indisputable, when that portion of the section is read with the following clause: 'Except such property as two thirds of both Houses of the Legislature may think proper to exempt from taxation.' This clause was inserted for some purpose. It cannot be said that it was added without any object,

without design, and merely to round a period. It must have been added because the framers of the instrument understood that without it the previous portion of the section required a property tax to be levied upon all property without exception, and that the clause was necessary in order to enable the Legislature to exempt any description of property from the operation of the general rule of taxation. By a slight change among the members of the sentence, but still retaining the same sense, it will read: 'All property in this State, except such property as two thirds of both Houses of the Legislature may think proper to exempt from taxation, shall be taxed in proportion to its value, to be ascertained as directed by law.' Read in that manner, it is evident that the section is a limitation upon the power of the Legislature to exempt from taxation any kind or parcel of property, unless exempted in the mode therein described, and that the clause was inserted as a relaxation of the general and imperative rule embodied in the previous words of the section.

"Accepting as a fact that our Constitutional Convention borrowed the first portion of the section relating to taxation from the Constitution of Texas, and seeing that the clause in that Constitution permitting the Legislature to exempt property from taxation, is omitted from our Constitution, the conclusion is inevitable that it was not intended that the Legislature should possess the power to exempt property from taxation, if the previous clauses of that Constitution did, in fact, limit the power of the Legislature in that respect. Suppose, for the purpose of illustration, that the Legislature, in framing the charter of a city, should grant the power of taxation over all property within the municipality, and should insert a section similar to that which we cited from the Constitution of Texas, and should afterwards amend the section, making it similar to that of our Constitution, no one would doubt that the power of exempting property from taxation was conferred upon the municipal government by the original charter, and was denied to it by the amended charter.

"In *The People vs. Coleman*, the Court, upon reference to the debates of the Constitutional Convention, were of opinion that the clause was adopted 'as a pledge of security to the native inhabitants against imaginary cases of inequality or arbitrary exactions,' and was intended to apply only to lands. The remarks of the members of a Convention are not as sure an

index of the intention of the Convention as the words of the instrument they may frame. While the words of the section, as first proposed—'All lands liable to taxation in this State,' etc.—would indicate the intention to limit the power of the Legislature, where lands were the subject of taxation, the words of the section, as finally adopted—'all property'—as clearly indicate the intention to limit the exercise of the taxing power, when applied to property of any description; that is to say: if the section, as first reported, limited the land tax to an *ad valorem* tax upon all lands, the section, as adopted, limited a property tax to an *ad valorem* tax on all property. And, even if the provision was intended to apply to lands only, and was inserted to quiet the fears of the native Californians, who owned large tracts of land, and were apprehensive that their lands would be made to bear an undue portion of the burden of supporting the State Government then about to be organized, if the power of exemption now contended for still remained with the Legislature, notwithstanding that section, then the pretense that the section would afford them protection was illusory and deceptive; for the Legislature would have the power, by exempting from taxation all other property, to cast the whole burden upon lands.

"The Court, in *The People vs. Coleman*, very truly say that if the position contended for is maintainable the Legislature would have no power to exempt from taxation the property of religious and eleemosynary corporations, nor by the same means to protect her own domestic interests, her agricultural, manufactures, mechanical employments, etc., or to relieve a 'meritorious class of citizens' of the burdens of taxation. These matters go to the policy of the section, but do not aid in its interpretation.

"The Court say: 'We cannot presume that a high, coördinate branch of the Government will ever be actuated by any other motive than a liberal, honest, and enlightened regard for the interest and welfare of the State.' If this is a legitimate argument in favor of the construction adopted by the Court in that case, it may be asked why the presumption is any more conclusive when the subject matter of legislation is taxation than when it is the creation of corporations, the division of the State in Congressional districts, the granting of a charter for banking purposes, or other matter, in respect to which the exercise of legislative power is limited or forbidden by the Constitution?



Whether the limitation of power in any particular respect was wise and judicious we do not undertake to declare, but it must not be forgotten that the Constitution is a limitation—not a grant—of power.

“TAXES ARE CHARGES IMPOSED BY OR UNDER THE AUTHORITY OF THE LEGISLATURE, upon persons or property subject to its jurisdiction. The power of taxation is a necessary incident to sovereignty, and under our system of government it pertains to the legislative department, for the levying of a tax is necessarily a legislative act. The tax must have its origin in a law, enacted for that purpose. As the power of the Legislature over the whole subject of taxation, including the property to be charged, the amount of the tax, the mode of levying, assessing, and collecting it, etc., is as ample as over any other matter that is the proper subject of legislative action, the Constitution must be examined, as before remarked, to ascertain what limitations, if any, are imposed upon its exercise. What is the import of the words: ‘Taxation shall be equal and uniform throughout the State?’ When the Legislature has established a rate of taxation for general State purposes, or to pay the funded debt, or for any or all of the purposes for which revenue is required, and, under the law, lands of one person, or situated in one county, are taxed at the same rate upon their assessed value as the lands of another person or those situated in another county, then it may be said that the taxation is equal so far as lands are concerned. But it may be safely said that no member of the Convention or elector who voted upon the question of the adoption of the Constitution ever heard of an instance in the United States where an *ad valorem* tax was levied, and the same species of property, owned by different persons or being in different counties, was charged with different rates of taxation; and it would not be reasonable to suppose that the Convention were providing against such an improbable violation of the rules of common honesty. But suppose A. owns land and B. owns a stock of goods, and an *ad valorem* tax is levied upon the land only—or suppose both A. and B. own lands or other property, but are pursuing different avocations, and the tax is levied upon lands only or upon the property of those pursuing A.’s avocation, can it be said, in either case, that the taxation is equal? The inequality is so apparent that argument cannot make it more manifest.

“But if it is still contended that taxation is equal, when the same species of property, wherever it may be, is charged with the same *ad valorem* tax, the next clause of the section, ‘All property in this State shall be taxed in proportion to its value,’ is a complete answer to the position. Construction or interpretation can scarcely make the meaning of the words more apparent, for there is no word in the clause of ambiguous or doubtful import. The meaning of taxation must be kept in view, and that is: a charge levied by the sovereign power upon the property of its subject. It is not a charge upon its own property, nor upon property over which it has no dominion. This excludes the property of the State, whether lands, revenues, or other property, and the property of the United States. That ‘all property in this State’ does not mean either all that the Legislature may designate, or all except such as the Legislature may exempt, is as self-evident as the axiom that the ‘whole is greater than a part.’ No process of reasoning or demonstration can make it plainer. Had the Convention intended that the property liable to taxation should be all property except such as the Legislature might exempt, the section of the Constitution of Texas, from which ours was taken, was before them, containing the provision adapted to that purpose, and the omission to copy that also, would be unaccountable.

“If the power exists in the Legislature to exempt growing crops, mining claims, and other property mentioned, the exemption may be carried still further, until property of one class is made to bear the whole burden of taxation. The exemption, so far as it includes private property, is in plain violation of the command of the Constitution.

“Does the attempted exemption of certain species of property from taxation render the whole Revenue Act void? We are of the opinion that such result does not ensue. The exemption being void, it must be stricken from the Act, and the Act must be read as if that provision had not been inserted. The Act of April 2d, 1866, when the illegal provision is expurgated, prescribes that an *ad valorem* tax of one dollar and five cents, etc., ‘is hereby levied and directed to be collected and paid for State purposes upon the assessed value of all property in this State.’ It is therefore the duty of the Assessors, under the Act, to assess all property in their respective districts, counties, etc., subject to taxation. This comprehends all property except that which may be denominated, generally,

public property. The omission of the Assessor to assess a parcel of property, under a misapprehension of the law, will not invalidate the assessment list. In that respect it has no greater effect than the casual omission of a parcel of property through a mistake of fact.

"It is scarcely necessary to say, that with the policy of the provision of the Constitution we have been considering, or of the several Acts of the Legislature attempting to create certain exemptions from taxation, we have nothing to do; or to add that our inclination accords with our duty in attempting to uphold the Acts of the Legislature if they are not clearly in conflict with the Constitution. For the learned Justices who united in the decisions in *The People vs. Coleman* and *High vs. Shoemaker*, we have great respect; and we would readily and willingly yield to the authority of their decisions, in cases where the construction of a constitutional provision is involved in doubt. But when the language of the Constitution is, as we find it in this section, clear and free from ambiguity or doubt, we must yield to the Constitution as the paramount authority.

"Judgment reversed and the cause remanded for a new trial."

[NOTE.—The foregoing opinion was rendered at the October Term, 1867.]

On petition for a rehearing, Justice Crockett, 34 Cal., p. 459, et seq., briefly disposes of the motion by denying it, using with regard to the oft-quoted Sec. 13 of Art. XI, State Const., the following language:

"In construing this clause—'taxation shall be equal and uniform throughout the State; all property in this State shall be taxed in proportion to its value, to be ascertained as directed by law'—no one can doubt that the general object which it was designed to accomplish was equality and uniformity in taxation. But there has been considerable diversity of opinion as to the nature and extent of the equality and uniformity intended to be established. In *The People vs. Coleman*, 4 Cal., p. 46, the Court held that the Legislature is not prohibited from discriminating between different classes of property or citizens; nor from exempting entirely from taxation such classes of either as it may see fit, unless it appear that the Legislature imposed a tax 'designedly operating unequally;' or unless 'a want of uniformity in its operations was apparent upon its face,' in which event, it admits, it would be the duty of the Court to pronounce the Act unconstitutional.

With all due respect for our predecessors, we cannot subscribe to this reasoning. We are unable to perceive that it is at all material whether the Act 'designedly' operates unequally, or whether its want of uniformity in its operation is apparent on its face. If a tax be grossly unequal or practically devoid of uniformity in its operation, it is wholly immaterial whether it is the result of design, accident, or inadvertence. Its validity cannot depend upon the motive which prompted it, nor upon the circumstances attending its enactment. If it be obviously an unequal tax and not uniform in its operation, it violates the Constitution, whatever may have been its origin. Nor can we subscribe to the proposition that the Legislature, at its discretion, may discriminate between different classes of property or citizens in the imposition of taxes. If it can tax one class of property or citizens at a particular rate and another class at a different rate, or omit to tax one or more classes at all, there is no limit whatever to its discretion in these respects. It may impose the whole burden of taxation upon a particular class, to the exclusion of all other classes. It may collect the whole revenue of the State from merchandise alone, or from a particular class of merchandise. It may tax lands or mines, and except the capital of banks, trade corporations, and all dealers in money or merchandise. In short, it may establish a system of taxation which would be utterly ruinous to a certain class or classes of citizens, whilst other more favored classes would be partially or wholly exempt. It is no answer to this argument to say that if the Legislature should so grossly abuse its trust, the remedy is to be found at the ballot box. The same answer would apply with like effect to any other violation of the Constitution by the Legislature. The functions of the Courts in respect to unconstitutional legislation are useless if the ballot box is to be appealed to as the only remedy. Nor are we without some practical illustrations of the value of this constitutional provision. Heretofore the mining interests have predominated in the legislation of this State, and mining claims have consequently hitherto escaped taxation. But it may be that at some early period the agricultural and commercial interests will exert a controlling influence in our legislation; in which event, except for this wise constitutional limitation, the burdens of taxation might be chiefly imposed on the mining interests, to the exonerating of other property justly liable for its share of the taxes. The subjects of taxation would be

thus continually shifting as the one or the other interest might predominate in political influence, thereby leading to retaliatory legislation on the part of the dominant class against the other. These considerations doubtless influenced the Convention, in framing the Constitution, to omit from that instrument the provision contained in the Constitution of Texas, whereby the Legislature is empowered, at its discretion, to exempt from taxation such property as it shall see proper. And it was precisely such possible abuses as those above mentioned that our Constitution was intended to prohibit. The language of the section we have quoted is so explicit as to leave but little room for doubt as to its correct interpretation; but, if any doubt remained, it is readily solved by reference to the peculiar circumstances under which that section was adopted. The omission to confer upon our Legislature the discretion specially delegated to the Legislature of Texas in respect to the exemption of property from taxation must, under all the circumstances, be presumed to have been intentional, and is equivalent to an express constitutional prohibition to the exercise of the powers thus designedly withheld. We adhere, therefore, to the proposition heretofore announced, that, under the Constitution, the Legislature has no power to exempt from taxation any private property whatsoever. If any practical inconvenience shall result from our construction of the clause in question, the remedy will be found in an amendment of the instrument itself. It is our province to expound it as we find it, and not to supply its omissions, if any there be, by forced interpretations.

“Rehearing denied.”

No better proof of the propriety of making this much needed reform can be given than this case, and the reasoning of the Court in deciding it. It has been adhered to since its rendition, and we presume it will be so for all time until a change is made in the Constitution, for no questions ought to be better settled than those of the character here treated of. This case is affirmed in *People vs. Gerke*, 35 Cal., p. 677; *People vs. Black Diamond Co.*, 37 Cal., p. 54; *People vs. Wharterby*, 38 Cal., p. 461. On german questions consult *People vs. Eastman*, 25 Cal., p. 603; *People vs. Park*, 23 Cal., p. 138; *Faulkner vs. Hunt*, 16 Cal., p. 171; *People vs. Holliday*, 25 Cal., p. 300; *People vs. Niles*, 35 Cal., p. 282. There is a peculiar similarity in the language of Sec. 11, Art. I of the Constitution, and the first sentence of Sec. 13, Art. XI. The first declares that “all laws of a general nature shall have a

uniform operation;" the latter, "taxation shall be equal and uniform throughout the State." For a clear exposition of the construction of the former see the language of Justice Sanderson in *Ex Parte Smith vs. Keating*, 38 Cal., p. 710. The case of the C. P. R. R. Co. vs. Bd. Sup. Placer Co., decided April 10th, 1872, was an effort by *certiorari* to compel a reduction of the assessed valuation of petitioner's property made by the Assessor for revenue purposes. The Board refused to make the reduction asked, and the Supreme Court sustained the action of the Board and dismissed the writ. At the same (April) term of the Supreme Court there was decided the case of *The People vs. The C. P. R. R. Co.* (No. 2,806), which was an action brought to recover the taxes levied and which were in the case last supra attempted to be reduced. The questions disposed of in this case are of the utmost importance, and the decision will be found to give a clear exposition of the relations of the State and Federal Governments on the subject of governmental revenue and their respective powers over the same. After disposing of some comparatively unimportant matters, the Court, through Wallace, C. J., proceeds as follows:

"*First*—It is claimed that the railroad and telegraph line in question are not subject to taxation under State laws. An elaborate argument has been submitted on the part of the railroad company, in which it is urged that the road and telegraph were established by the Federal Government in the exercise of its constitutional powers 'to establish Post Offices and post roads;' 'to provide for the common defense and general welfare of the United States;' 'to suppress insurrections and repel invasion,' and 'to raise and support armies.' That the taxing power of the State Government, otherwise extending generally to all subjects found within the borders of the State, is to some degree qualified and restrained by the provisions of the Federal Constitution and by the Acts of Congress passed in pursuance thereof, is undeniable. The question in this respect has always been as to the mere degree or extent of the restraint imposed. When the Federal Constitution was before the States for ratification, the question of the respective powers of taxation to be thereafter exercised by the individual States upon the one hand and the Federal Government upon the other, in the event of the proposed ratification, was a subject of the most anxious consideration. The opponents of the proposed system, which was to be established under the Federal Constitution, held this language: 'Revenue is as

requisite to the purposes of the local administration as to those of the Union, and the former are at least of equal importance with the latter, to the happiness of the people. It is, therefore, as necessary that the State Governments should be able to command the means of supplying their wants as that the National Government should possess the like faculty in respect to the wants of the Union. But an indefinite power of taxation in the *latter* might, and probably would in time, deprive the *former* of the means of providing for their own necessities, and would subject them entirely to the mercy of the National Legislature.'

"To this objection, Mr. Hamilton, the recognized champion of the proposed new system, and who lent the force of his unrivaled abilities, and the weight of his high personal character to its adoption, replied."

Here the Court quotes at length from the *Federalist*, No. 33, in opposition. The Court then proceeds at length to consider the cases of the Bank of the United States, chartered in 1816; the case of *McCullough vs. Maryland*, 4 Wheat., p. 316, wherein Chief Justice Marshall repudiated the views in the *Federalist*, quoted. Says the Court: "That decision declared in effect that the State power to tax had been taken away." The cases subsequently arising known as the Ohio Bank Cases, *Osborn vs. The Bank of the U. S.*, 9 Wheat., p. 738, and others where the case in 4 Wheat., *supra*, is reviewed, and the case of *Weston vs. The City Council of Charleston*, 2 Peters, p. 449, also referred to by Justice Wallace. He then proceeds as follows:

"But we are of opinion that the case under consideration does not fall within the principle announced in any of these cases, for several reasons.

"The corporation here was not, in the first instance, created by the Government of the United States, but by the State; and even if it be conceded that the corporation thus created under State law has been subsequently adopted by the Federal Government, and availed of by that Government as a means of carrying into effect its constitutional powers, such adoption would not, upon the principles adverted to, exempt it from the operation of the State revenue laws. But there is another reason which we think conclusive upon this point, and that is, that the tax in question is not a tax imposed upon the business of the corporation defendant, but only upon its real property situate within the State. The principle upon which mere *means* created by the Federal Government as agencies in the execution of its powers are to be exempted from State

taxation has never been applied to the exemption of real property within the State, even when occupied or used exclusively in connection with the business which is itself exempted. Hence, in *McCulloch vs. The State of Maryland*, supra, the Chief Justice observed: 'This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State,' etc. It is said, however, by the counsel for the railroad corporation, that this was a mere *dictum* of the Chief Justice; that the only question before the Court in that case was as to the authority of the State to tax the *business* of the bank, and that its authority to tax the *real estate* belonging to the bank was not a point in judgment. But the Court having announced a principle, by the application of which the extent of the State authority to impose taxes was to be measured and defined, it of course became necessary to indicate the limits of the operation of that principle—to point out the general subjects to which it *did not* as well as those to which it *did* apply. The counsel for the State of Maryland had urged that the principle itself was purely arbitrary, and one which, if sanctioned by the Court, was utterly incapable of limitation. 'We have not been told,' he said, 'whether the banking houses of this corporation and any other real estate it may acquire for the accommodation of its affairs, are also of this privileged order of property. In principle it must be the same; for the privilege, if it exists, belongs to the corporation, and must cover equally all its property.' These views had been urged upon the attention of the Court in the discussion at the bar—a discussion characterized, as the Chief Justice declared, by 'a splendor of eloquence and strength of argument seldom, if ever, surpassed.' It was in response to this position, and in answer to the reasoning by which it had been supported, that the opinion of the Court undertook to expound and apply the principle which it had asserted; and we think that, when in order to distinctly define the scope of its operation, the Court declared that the principle of exemption *did not extend to real property within the State*, it was the authoritative determination of a question of surpassing importance in itself—one which had been distinctly presented, elaborately argued by counsel, and deliberately considered by the Court.

"But whether the case of *McCulloch vs. The State of Maryland* is to be considered as an authoritative adju-



dication upon this precise point or not becomes unimportant in view of the much later case of *Thomson vs. Pacific Railroad*, 9 Wallace, p. 579, determined by the Supreme Court of the United States in the year 1869. In that case certain stockholders in that railroad corporation filed a bill in the Circuit Court of the United States for the district of Kansas to enjoin the collection of taxes assessed upon the railroad and telegraph property of the company under the revenue laws of the State of Kansas. It was there distinctly claimed that the principle of exemption from State taxation was applicable to that property; and this was the principal issue, indeed the sole question presented. The argument by which the claim was supported was much the same, in its general scope, as that submitted for our consideration. The Court was unanimously of the opinion that such a claim was without support. After a review of the authorities, it expressed its views as follows: 'But we are not aware of any case in which the real estate or other property of a corporation not organized under an Act of Congress has been held to be exempt, in the absence of express legislation to that effect, to just contribution, in common with other property, to the general expenditure for the common benefit, because of the employment of the corporation in the service of the Government.' Further speaking of the principle upon which such exemption is rested, it said: 'We cannot apply it to the case of a corporation deriving its existence from State law, and holding its property within State jurisdiction and under State protection.'

"We have not overlooked the argument of the counsel for the defendant here, in which it is asserted that there is a distinction to be taken between the case of *Thomson vs. Pacific Railroad* and the one now under consideration. It is said that in the former case it was admitted in the pleadings that the corporation was 'a local or State corporation;' but we have already had occasion to observe that it is also admitted by the pleadings in this case 'that the said defendant, the Central Pacific Railroad Company of California, is a corporation duly organized and acting under the laws of the State of California.' In this respect, therefore, the two cases are identical. It is also urged that in the former case 'there had been no legislation on the part of Kansas by which that State could be said to have relinquished any of its sovereign rights over the

railroad company; while it is insisted that, upon the part of the State of California, such laws have been enacted as amount to a renunciation of State power in the premises. Without pausing at this point to consider whether, under our constitutional system of government, it is or would be competent to either the State or Federal Government to abdicate in favor of the other its rightful authority, constitutionally vested in it, over such a subject as this, so as to destroy the uniformity of the relations existing between the several States upon the one hand, and the Federal Government upon the other, we are of opinion that there is nothing to be found in the legislative enactments of this State which imports a renunciation upon its part of the sovereign power of taxation over the railroad and telegraph line in question. On the contrary, we find that in the statute of April 4, 1864 (Statutes 1863-4, p. 471), enacted for the purpose of enabling the railroad company to comply with and perform the provisions and conditions of the Act of Congress of July 1, 1862, it is distinctly provided as follows: 'Said company to be subject to all the laws of this State concerning railroad and telegraph lines, except that messages and property of the United States, of this State, and of the said company, shall have priority of transportation and transmission over said line of railroad and telegraph.' The exception points out, and was obviously intended to point out, the *only particulars* in which the assent of the State there accorded to the provisions of the Act of Congress should change in any respect the conditions theretofore existing between the railroad corporation upon the one hand, and the State of California upon the other, and the liability to State taxation was not one of these. For these and many other reasons, which we need not here stop to enumerate, we are of opinion that the authority of the State to impose taxation upon the railroad and telegraph line, in common with all other subjects of taxation within its limits, is clear and unquestionable, and the objection of the defendant in that respect must be overruled.

"*Second*—It is next objected that the revenue laws of the State are unconstitutional—null and void—as not being uniform in their operation, and in this connection Article I, Section 11, of the State Constitution, is cited in the following words: 'All laws of a general nature shall have a uniform operation.'

"It is not denied that the mere taxation imposed by the revenue laws is equal and uniform, nor is it pretended that property is taxed otherwise than in pro-

portion to its value; but it is said that although these cardinal constitutional rules are observed in the structure of the revenue laws of the State, yet there is a want of uniformity between the particular laws prevailing in several localities of the State in respect to the enforcement of the payment of *delinquent* taxes; that in some counties this payment is enforced by means of a levy upon the property of the delinquent, and a sale thereof made by the Tax Collector to the bidder who will pay the tax for the least amount of property, while in other counties an action at law, judgment, execution, and Sheriff's sale are resorted to; that where the sale is made by the Sheriff, under judgments rendered, the deed delivered to the purchaser is conclusive, while in case the sale be made by the Tax Collector, it is only *prima facie* evidence of title, etc.

“That the legislative power is restrained only by the limitations of the Constitution, clearly imposed upon its exercises, and that a statute enacted is not to be put aside by the Courts, unless its conflict with the fundamental law be manifest, are rules of familiar application. The deference we owe to the legislative will is only second to that which we owe to the commands of the Constitution, which both the Legislature and the Court are sworn to obey.

“The particular section of the Constitution supposed to have been infringed by the revenue law in force in the County of Placer concerns ‘*laws of a general nature,*’ and declares that *such* laws shall have a *uniform operation*. The Constitution, it will be observed, has not undertaken to declare that *all* laws shall have a uniform operation—uniformity in that respect is made requisite only in case the law itself be one of a *general nature*, and if it do not purport to be such an one, no objection as to uniformity or want of uniformity in its operation can be interposed. The *nature* of a given statute as being general or special must depend in a measure upon the legislative purpose discernible in its enactment. We are not to say that a statute, plainly special in its scope, must either have a uniform operation or not operate at all—for this were to add another to the limitations which the Constitution has imposed upon the legislative power, and to hold in effect that no special Act could be passed at all, at least if ‘uniform’ operation means *universal* operation—as the argument of the defendant's counsel would apparently maintain. Nor are we to say that a special

statute—special in its *aim* and in the object it has in view—is by mere construction to be converted into a general statute, because the general subject with which it deals *might* have been made the subject of a general law. It is obvious that every law upon a *general subject* is not *per se*, nor by constitutional intendment, necessarily a law of a general nature. The subject may be general, but the law and the rule it prescribes may be special. Fees of office, for instance, constitute a general subject—it is one which pervades the length and breadth of the State, and extends into every political subdivision of which it is composed—yet a statute may prescribe what these fees of office shall be in a particular county, and may declare that they shall differ from fees established for the same official duties performed in another county. Such a law would not be a law of a general nature, involving the constitutional necessity of uniform operation, but it would be a special law upon a general subject; and at an early period in our judicial history the constitutionality of such a statute was unhesitatingly sustained by this Court.—*Ryan vs. Johnson*, 5 Cal., p. 86. The legislation of the State has since then proceeded upon the assumed correctness of the construction given to the Constitution in that case. The views there announced have never since then been seriously questioned by any case in this Court to which our attention has been called, and as an exposition of the clause of the Constitution under consideration, in point of time almost contemporaneous with the adoption of the Constitution itself, and, ever since its enunciation, observed and followed in the legislative proceedings of the State, it must be considered as conclusive upon the point of constitutional law involved in this objection.

“*Third*—It is claimed that the tax in question was illegally assessed, because not assessed by a County Assessor for Placer County—the point being that the record shows that the assessment of a portion of this road and telegraph line was made in Revenue District No. 1, by the Assessor of that district, and the assessment of the remainder of the road and telegraph line in Placer County was made in Revenue District No. 2, by the Assessor of that district. It is argued that such an officer as a *District Assessor*—at least of a district less in its territorial extent than an entire county—is unknown to the Constitution. That instrument (Art. XI, Sec. 13) provides as follows: ‘Section 13. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to

its value, to be ascertained as directed by law; but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated.' It is obvious that the 'district' for which an Assessor is to be chosen is not necessarily coterminous with a single county, for a county being also named in the clause, the expression would become thereby merely tautological, and, so far, without the precision which is to be looked for in every word of the organic law. A county is one territorial division, expressly recognized by the Constitution for revenue purposes, in the clause already cited; a district is another, and these were obviously not intended to designate the same or an identical extent of territory. Obviously, a revenue district may be less in extent than a county, of which it is a part. There is nothing in the Constitution which expressly forbids it to be so, or presents a substantial difficulty in that construction of its several provisions.

"Fourth—The fourth and last objection to be noticed is also rested upon Section 13, Article XI, of the Constitution, already recited. It is argued that the statute authorizing an action to be brought by the District Attorney, for the collection of taxes, is not warranted by this section of the Constitution—that if such an action is to be brought at all it must be brought by the Tax Collector. The action is brought not by the Tax Collector, nor by the District Attorney, but by the people of the State of California, and is conducted by their District Attorney for the County of Placer. The money sued for is claimed by the people as due to them for taxes delinquent and owing by the defendant to them. The office of District Attorney is one created by the Constitution (Article VI, Section 11), and the Legislature is therein required to fix by law his duties and his compensation. By the Act of April 29, 1851 (Hitt. General Laws, Sec. 2402), it is made the general duty of that officer to prosecute actions accruing to the State or his county; and by the Act of May 17, 1861 (Hitt. General Laws, Sec. 6188), it is especially made his duty to commence actions in the name of the people of the State of California for the recovery of delinquent taxes. This legislation is directly authorized by Sec. 11, Art. VI of the Constitution already referred to. It is the duty of the Tax Collector to receive taxes from those offering to pay them; and the law might have made it his duty to take steps to enforce their collec-

tion when delinquent; but it has not done so in this instance, but has assigned that duty to the District Attorney; and we do not find in the Constitution that where the taxpayer has neglected and refused to pay the taxes, though due, the Legislature may not authorize judicial proceedings to be instituted, and may not, in case of such proceedings, direct the proper District Attorney to conduct them as other judicial proceedings in which the people are the party in interest. The right to bring the suit at all imports the duty to provide for its conduct by some officer or person competent for the discharge of that duty; and even if it be conceded that it is the general duty of the Collector to receive the taxes when offered by the taxpayer, and that it is not competent to the Legislature to authorize any other officer to perform that general duty, unless it first make such officer *ex officio* Tax Collector, we apprehend that when the Tax Collector has been defeated in the performance of that duty by the persistent refusal of the taxpayer, and has made his official return to that effect, his legal duties as Tax Collector may be said to have so far come to an end and been discharged by him as that judicial proceedings may be instituted to recover of the delinquent a sum of money equal to the delinquent tax, together with damages, percentage, costs, etc.

"We see nothing in this course, if pursued, which would amount to an interference with what is claimed to be the Constitutional duties of the Tax Collector, or a disturbance of any discernible scheme of county government to be found in the Constitution.

"The judgment and order denying a new trial must, therefore, be affirmed, and it is so ordered.

"We concur:

"WALLACE, C. J.

"NILES, J.,

"CROCKETT, J.,

"RHODES, J.,

"BELCHER, J."

## CHAPTER II.

## DEFINITIONS.

SECTION 3617. Certain terms and phrases defined.

3617. Whenever the terms mentioned in this section are employed in this Title, they are employed in the senses hereafter affixed to them. Certain terms and phrases defined.

*First*—The term “real estate,” includes:

1. The ownership of, claim to, possession of, or right to the possession of land;
2. All mines, minerals, and quarries in and under the land, and all rights and privileges appertaining thereto;
3. Improvements.

*Second*—The term “improvements” includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land;
2. All fruit, nut bearing, or ornamental trees and vines not of natural growth.

*Third*—The term “personal property” includes everything which is the subject of ownership not included within the meaning of the term “real estate.”

*Fourth*—The term “full cash value” means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.

NOTE.—See notes to Sec. 3607, ante, and Sec. 3693, post. These definitions are to enable the Assessor to specify all taxable property by appropriate names on his assessment roll.—See note to Sec. 3629, post.

## CHAPTER III.

## ASSESSMENT OF PROPERTY.

SECTION 3627. Property assessed at full cash value.

3628. Assessment to be made, when.

- SECTION 3629.** Assessor to require a statement containing what.
3630. Supervisors to furnish blank forms of statement, etc.
3631. Statement to be filled out and returned to Assessor.
3632. Assessor may subpoena witnesses.
3633. Property of person neglecting or refusing to give statement, how assessed.
3634. Accurate description of property, how obtained by Assessor.
3635. Assessment of unknown or absent owners of property.
3636. Same.
3637. Property situated in another county.
3638. Consigned property.
3639. Trustees, guardians, executors, and administrators.
3640. Holders of stock in firm or corporation.
3641. Property of firm or corporation assessed where situated.
3642. Undistributed property of deceased persons.
3643. Ferries and toll bridges, where assessed.
3644. Vessels, where assessed.
3645. Same.
3646. Boats and small craft.
3647. Property and money in litigation.
3648. Property concealed, misrepresented, etc.
3649. Property not taxed in previous year.
3650. Property, how listed.
3651. Form of assessment book.
3652. Assessment book, when completed. Oath of Assessor.
3653. Map of property assessed in cities or towns.
3654. Assessment and map books delivered to and kept by Clerk of Supervisors. Certain notices to be published.
3655. Statement by Assessor to State Board of Equalization, to show what, when made.
3656. Penalty for failure of Assessor to complete assessment book or transmit statement.
3657. Persons claiming ownership of property and desiring to be assessed.
3658. Supervisors to furnish Assessor with maps. Costs, how paid.
3659. Lists of land sold by State to be transmitted to Assessor of county where the property is situated.
3660. When Assessor liable for taxes on unassessed property.
3661. District Attorney to prosecute Assessor for unpaid taxes, when.
3662. Judgment, when entered against Assessor.
3663. Rolling stock of railroads, how assessed.



3627. All property must be assessed at its full cash value.

Property assessed at full cash value.

NOTE.—See Rule VI of the State Board of Equalization, in note to Sec. 3692, post. See, also, Sec. 3617, Subd. 4, ante. As to the method of assessing, determining values, and a full discussion of all questions pertaining thereto, see note to Sec. 3693, post. See, also, note to Sec. 3607, ante. As to double assessment, see *People vs. Kohl*, 40 Cal., p. 127. Property transiently in a county to be assessed where the owner lives.—See *Reiley vs. Lancaster*, 39 Cal., p. 354. At a convention of Assessors held, under a call of the State Board of Equalization, at Sacramento City, Sept. 24, 1872, there were twenty-five counties represented, and presided over by F. R. Dray, Assessor of Sacramento County. Among other things the following constructions were given to the provisions of the Code on the subject of revenue, connected with their duties, to wit:

T. M. Lilly, Assessor of Santa Clara County, submitted the following question for discussion: Is property acquired after the first Monday in March in each year assessable or subject to taxation?

The Convention was unanimous in the decision "that all property in the possession or under the control of any person at the time of assessment is subject to taxation, irrespective of the time when it was acquired."

The practicability of assessing growing crops was discussed by the convention. There was a division among the Assessors on the question. It was proposed to request the State Board to repeal Rule XV, adopted April 9, 1872, by said Board. The subject was referred to the State Board without further action by the Assessors.

A. H. Jamison, Assessor of Stanislaus County, asked leave to submit to the convention the question, "Whether the Assessor has the right to equalize or correct assessments made by his deputies." They decided that he had, and in every instance ought to supervise them—changing them, or making such alterations or corrections as he thought fit.

J. S. Jackman, Assessor of Tehama County, asked, "Is the Assessor bound by the statement made under oath of any person being assessed for the property owned by them?"

The Chairman then read so much of Rule VII which applies to the point.

The Chairman asked the Convention if they regarded

it as a special duty for each Assessor to defend his assessments before the Board of Supervisors. The decision was as follows:

"We construe Sec. 3677 of the Political Code to declare that it is a most special and particular duty of the Assessor to be present at the session of the Board of Supervisors between the first and the fourth Monday of July in each year, to defend his assessments and see that the Board makes no improper reduction for want of evidence on the part of the Assessor."

Covell of San Joaquin requested the opinion of the convention upon the meaning of Sec. 3687. He wished an expression as to whether the solvent debt of A, secured by mortgage and hypothecated by him to B as security for a loan, should be assessed to A or B. In the opinion of the convention it was held properly assessable to A, upon the ground that the personal property referred to in Sec. 3687 was tangible and not incorporeal personal property.

The convention was asked to give an opinion concerning the duty of the Deputy Assessors to take and subscribe an affidavit in the assessment book as required by Sec. 3652 of the Political Code, and if it was necessary for them to do so. They gave a decision as follows: The Assessor must take and subscribe an affidavit in the assessment book, and each and every deputy must take and subscribe an affidavit in conformity with the Code. The affidavit of the Assessor will not suffice for his deputies; they must make a separate affidavit according to the requirements of Sec. 3652 of the Code.

Assessment  
to be made,  
when.

3628. The Assessor must, between the first Monday in March and the first Monday of July in each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, and must assess such property to the persons who own, claim, have the possession or control thereof.

NOTE.—Stats. 1861, Sec. 13. The personalty is taxable in the county in which it is found, unless it is there in transit or for temporary purposes. Money and gold dust is in this respect different and may be taxed in the county where the owner has his domicile.—See *People vs. Niles*, 35 Cal., p. 282. As to transient property, see *City of Oakland vs. Whipple*, 37 Cal., p. 112.

Double assessments improper.—See *People vs. Whartenby*, 38 Cal., p. 461; and *People vs. Kohl*, 40 Cal., p. 127.

3629. He must exact from each person a statement in writing showing separately:

Assessor to require a statement containing what.

1. All property belonging to, claimed by, or in the possession or under the control or management of such person;

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member;

3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is President, Secretary, Cashier, or Managing Agent;

4. The county in which such property is situated, or in which it is liable to taxation;

5. An exact description of all lands, improvements, and personal property, including all vessels, steamers, and other water craft, and deposits of money or gold dust, and the names of the persons with whom such deposits are made, and the places in which they may be found;

6. All other facts required by the State Board of Equalization or by the Assessor.

Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer need not include such property in the statement made by him, but his statement must show the name of the person or officer who made the statement in which such property is included.

NOTE.—*Subd. 1.*—*People vs. McCreery*, 34 Cal., p. 432; *People vs. Frisbie*, 31 Cal., p. 146. Constitutional construction of the term "assessment."—*Taylor vs. Palmer*, 31 Cal., p. 240. Disputed property.—*Robinson vs. Gear*, 6 Cal., p. 273. Government land paid for.—*People vs. Shearer*, 30 Cal., p. 645. Possessory

claim.—*People vs. Cohen*, 31 Cal., p. 210; *People vs. Blk. Diamond C. M. Co.*, 37 Cal., p. 54.

*Subd. 2.*—*Hart vs. Plum*, 14 Cal., p. 148; *People vs. McEwen*, 23 Cal., p. 54; *Brunn vs. Murphy*, 29 Cal., p. 326; *Sneath vs. Arnold*, 28 Cal., p. 612; *People vs. Home Ins. Co.*, 29 Cal., p. 533. No property is exempt.—*People vs. Gerke*, 35 Cal., p. 677.

*Subd. 3.*—*People vs. McEwen*, 23 Cal., p. 54; *Brunn vs. Murphy*, 29 Cal., p. 326; *People vs. Home Ins. Co.*, 29 Cal., p. 533. Debts as property.—*People vs. Arguello*, 37 Cal., p. 524.

*Subd. 4.*—*People vs. Holliday*, 25 Cal., p. 300; *People vs. McCreery*, 34 Cal., p. 432.

*Subd. 5.*—Improvements.—*Hart vs. Plum*, 14 Cal., p. 148. Description.—*Faulkner vs. Hunt*, 16 Cal., p. 167; *People vs. Emp. G. & S. M. Co.*, 33 Cal., p. 171; *People vs. Rains*, 23 Cal., p. 127; *High vs. Shoemaker*, 22 Cal., p. 363; *Lachman vs. Clark*, 14 Cal., p. 131; *Kelsey vs. Abbott*, 13 Cal., p. 609; *Patten vs. Green*, 13 Cal., p. 325. Mistake does not vitiate.—*Bosworth vs. Dangien*, 25 Cal., p. 296; *Sharp vs. Danney*, 33 Cal., p. 513; *People vs. Gerke*, 35 Cal., p. 677; *People vs. Blk. D. M. Co.*, 37 Cal., p. 54.

*Subd. 6.*—Mortgage.—*People vs. Eastman*, 25 Cal., p. 601; *People vs. McCreery*, 34 Cal., p. 432. See generally, note to Sec. 3607, ante.

Supervisors  
to furnish  
blank  
forms of  
statement,  
etc.

3630. The Board of Supervisors must furnish the Assessor with "blank forms" of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows:

I, ———, do swear that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am President, Cashier, Secretary, or Managing Agent, own, claim, possess, or control, and which is not already assessed.

Statement  
to be filled  
out and  
returned to  
Assessor.

3631. The Assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out.

NOTE.—See Secs. 429, 430, Penal Code Cal.

3632. The Assessor may, in his discretion, subpoena and examine witnesses in relation to any statement; and all persons are required to testify when requested so to do by him; and in case of refusal, the Judge of any Court must issue a subpoena and compel a refusing witness to give testimony, and may for each refusal impose a fine not exceeding twenty dollars.

Assessor  
may  
subpoena  
witnesses.

3633. If any person, after demand made by the Assessor, neglects or refuses to give under oath the statement herein provided for, or to comply with the other requirements of this Title, the Assessor must note the refusal on the assessment book, opposite his name, and must make an estimate of the value of the property of such person; and the value so fixed by the Assessor must not be reduced by the Board of Supervisors.

Property  
of person  
neglecting  
or refusing  
to give  
statement,  
how  
assessed.

NOTE.—Stats. 1861, Sec. 13.

3634. Whenever the Assessor deems it necessary to obtain an accurate description of any tract or lot of land in his county, he may require the owner or his agent to furnish the same, with any title papers he may have in his possession; and if on demand the owner or agent neglects or refuses to furnish the same, the Assessor may employ the County Surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein; and the expenses of such survey must be returned by the Assessor to the County Auditor, who must add the amount to the taxes assessed upon the property, which amount so added must, when collected by the Collector of the county, be paid over to the County Surveyor.

Accurate  
description  
of property,  
how  
obtained  
by Assessor

3635. If the owner or claimant of any property, not listed by another person, is absent or unknown, the Assessor must make an estimate of the value of such property.

Asses-  
ment of  
unknown  
or absent  
owners of  
property.

NOTE.—Hart vs. Plum, 14 Cal., p. 148; People vs. Home Ins. Co., 29 Cal., p. 533; Kelsey vs. Abbott, 13 Cal., p. 609. Absent or unknown.—O'Grady vs. Barnheisel, 23 Cal., p. 287; Moss vs. Shea, 25 Cal., p. 38.

**Same.** 3636. If the name of the absent owner is known to the Assessor, the property must be assessed in his name; if unknown, the property must be assessed to "unknown owners."

NOTE.—See note to preceding section.

**Property situated in another county.** 3637. The Assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same, by mail or express, to the Assessor of the proper county, who must assess the same as other taxable property therein.

**Consigned property.** 3638. All personal property consigned for sale to any person within this State from any place out of this State must be assessed as other property.

NOTE.—See note to Sec. 3607, ante, "Property in transit."

**Trustees, guardians, executors, and administrators.** 3639. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1, 1872, cited in note, Sec. 18, ante.

**Holders of stock in firm or corporation.** 3640. The owner or holder of stock in any firm or corporation, the entire capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

NOTE.—See note to Sec. 3607, ante, "Corporations."

**Property of firm or corporation assessed where situated.** 3641. The property of every firm and corporation must be assessed in the county where the property is

situate, and must be assessed in the name of the firm or corporation.

NOTE.—See note to Sec. 3607, ante, "Corporations."

3642. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

Undistributed property of deceased persons.

3643. Ferries and toll bridges must be assessed in the county where the tolls are collected.

Ferries and toll bridges, where assessed.

3644. All vessels of every class which are by law required to be registered must be assessed and the taxes thereon paid only in the county, or city and county, where the same are registered, enrolled, or licensed.

Vessels, where assessed.

NOTE.—See note to Sec. 3607, ante, "Shipping." Vessels are taxable at the port from which they sail and where the owners have their domiciles, but not in a county where they may be found temporarily.—People vs. Niles, 35 Cal., p. 282; Minturn vs. Hays, 2 Cal., p. 590.

3645. Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this State, the owners of which reside in this State, must be assessed in this State.

Same.

NOTE.—See note to Sec. 3607, ante, "Shipping."

3646. All boats and small craft not required to be registered, must be assessed in the county where their owner resides.

Boats and small craft.

NOTE.—Minturn vs. Hays, 2 Cal., p. 590.

3647. Money and property in litigation in possession of a County Treasurer, of a Court, County Clerk, or Receiver, must be assessed to such Treasurer, Clerk, or Receiver, and the taxes be paid thereon under the direction of the Court.

Property and money in litigation

NOTE.—See Robinson vs. Garr, 6 Cal., p. 273.

Property  
concealed,  
misrepre-  
sented, etc.

3648. Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the Board of Supervisors.

Property  
not taxed  
in previous  
year.

3649. Any property discovered by the Assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

Property,  
how listed.

3650. The Assessor must prepare an assessment book, with appropriate headings, alphabetically arranged, in which must be listed all property within the county, and in which must be specified in separate columns under the appropriate head:

1. The name of the person to whom the property is assessed;
2. Land by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon;
3. City and town lots, naming the city or town, and the number, block, according to the system of numbering in such city or town, and improvements thereon;
4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;
5. The cash value of real estate, other than city or town lots;
6. The cash value of improvements on such real estate;



7. The cash value of city and town lots; Same.
8. The cash value of improvements on city and town lots;
9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate;
10. The cash value of all personal property, exclusive of money;
11. Amount of money;
12. The total value of all property;
13. The total value of all property after equalization by the State Board;
14. The figure one (1), in separate columns, opposite the name of every person liable to pay a road poll tax or a poll tax;
15. Such other things as the Board of Equalization may require.

NOTE.—Subds. 10, 11. Debts evidenced by choses in action and judgments.—*People vs. Park*, 23 Cal., p. 138; *People vs. Eastman*, 25 Cal., p. 601.

Form of assessment book.

3651. The form of the assessment book must be substantially as follows:

Assessment Book of the Property of — County, for the year 18—, assessed to all owners and claimants, known and unknown.

|   |  |                        |
|---|--|------------------------|
| Remarks .....   |  |                        |
| Poll tax.....   |  |                        |
| Total tax.....  |  | •                      |
| Total value of all property after equalization by the State Board of Equalization.....  |  | •                      |
| Total value of all property.....  |  | •                      |
| Amount of money.....  |  | •                      |
| Value of personal property.....   |  | •                      |
| Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon..... |  | •                      |
| Value of city and town lots.....  |  | •                      |
| Value of improvements thereon.....  |  | •                      |
| Value of real estate other than city and town lots.....   |  | •                      |
| Number of acres.....  |  |                        |
| DESCRIPTION OF PROPERTY.  | City or town lots.                         | Block.....             |
|   | Real estate other than city and town lots. | Lot.....               |
|   |  | Fraction.....          |
|   |  | Range, E. or W.....    |
|   |  | Township, N. or S..... |
|   |  | Section.....           |
|   | Subdivision of section.....                |                        |
| Residence .....   |  |                        |
| Taxpayers' names.....   |  |                        |
| When tax paid.....  |  |                        |

Personal property. (Here items may be enumerated in the space to column for number of acres.)

3652. On or before the first Monday of July, in each year, the Assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows:

Assessment  
book, when  
completed.

“I, —, Assessor of (or Deputy Assessor, as the case may be) — County, do swear that between the first Monday in March and the first Monday in July, eighteen hundred and —, I have made diligent inquiry and examination to ascertain all the property within the county (or within the subdivision thereof assessed by me, as the case may be), subject to taxation, and that I have assessed it on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the Assessor under the revenue laws; and that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment through favor or reward.”

Oath of  
Assessor.

But the failure to take or subscribe such an affidavit or any affidavit, will not in any manner affect the validity of the assessment.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1st, 1872, cited in note to Sec. 18, ante.—See *People vs. S. F. Savings Union*, 31 Cal., p. 132. He *and* his deputies; each deputy must swear to his own work and the principal to *his*, and on the information so sworn to swears to the entire roll. This does not affect the validity of the assessment, but goes to secure efficient performance of duty by the officer. A failure in duty is punished by Sec. 176, Penal Code Cal.

3653. The Assessor must, when directed so to do by the Board of Supervisors, in a map book make a plan of the various blocks within any incorporated city or town, and mark thereon in each subdivision the name of the person to whom it is assessed.

Map of  
property  
assessed in  
cities or  
towns.

NOTE.—Stats. 1861, Sec. 20.

Assessment  
and map  
books  
delivered  
to and kept  
by Clerk of  
Supervisors

3654. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the Clerk of the Board of Supervisors, who must immediately give notice thereof and of the time the Board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the Board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

Certain  
notices  
to be  
published.

Statement  
by Assessor  
to State  
Board of  
Equali-  
zation, to  
show what,  
when made

3655. On the first Monday of July in each year the Assessor of each county must transmit to the State Board of Equalization a statement showing:

1. The several kinds of personal property;
2. The average and total value of each kind;
3. The number of live stock, number of bushels of grain, number of gallons of wines or liquors, number of pounds or tons of any article sold by the pound or ton;
4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

Penalty for  
failure of  
Assessor to  
complete  
assessment  
book or  
transmit  
statement.

3656. Every Assessor who fails to complete his assessment book or who fails to transmit the statement mentioned in the preceding section to the State Board of Equalization, forfeits the sum of one thousand dollars, to be recovered on his official bond, for the use of the county.

Persons  
claiming  
ownership  
of property  
and  
desiring  
to be  
assessed.

3657. Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

3658. The Board of Supervisors must provide maps for the use of the Assessor, showing the private

lands owned or claimed in the county, and, if surveyed under authority of the United States, the divisions and subdivisions of the survey; if held under Spanish grants, the exterior boundaries of such grants and the number of acres claimed. Maps of cities and villages, or school districts, may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the County General Fund.

Supervisors to furnish Assessor with maps.

Costs, how paid.

3659. On or before the first Monday in March in each year the Surveyor General of the State and the Tide Land Commissioners must make out and transmit to the Assessor of each county where lands or lots lie that may have been sold by the State, for which certificates of purchase, patents, or deeds have issued during the year preceding, certified lists of such lands or lots, giving a description thereof by congressional divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

Lists of land sold by State to be transmitted to Assessor of county where the property is situated.

3660. The Assessor and his sureties are liable on his official bonds for all taxes on property within the county, which, through his willful failure or neglect, is unassessed.

When Assessor liable for taxes on unassessed property.

3661. The District Attorney must, after the Assessor completes the assessment book for the year, commence an action on the Assessor's bond for the amount of taxes lost from such willful failure or neglect.

District Attorney to prosecute Assessor for unpaid taxes, when.

3662. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

Judgment, when entered against Assessor.

3663. Where the railroad of a railroad corporation lies in several counties, its rolling stock must be appor-

Rolling  
stock of  
railroads,  
how  
assessed.

tioned between them so that a portion thereof may be assessed in each county, and each county's portion must bear to the whole rolling stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in this State.

NOTE.—This section was added by Act of March 27, 1872.—Stats. 1872, p. 586. See *C. P. R. R. Co. vs. Bd. Sup. Placer Co.*, and *The People vs. C. P. R. R. Co.*, decided at April term, 1872, cited in note to Sec. 3607, ante. See *R. R. Co. vs. Jackson*, 7 Wallace, U. S. Sup. Ct. Rep., p. 262.

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## CHAPTER IV.

### EQUALIZATION OF TAXES.

#### ARTICLE I. COUNTY BOARDS OF EQUALIZATION.

##### II. STATE BOARD OF EQUALIZATION.

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#### ARTICLE I.

##### COUNTY BOARDS OF EQUALIZATION.

- SECTION 3672. Supervisors, when to equalize assessment.
3673. Supervisors empowered to correct assessment.
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3675. Examination of person assessed by Supervisors for purposes of equalization.
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3677. Assessor and Deputy to attend upon hearing of application.
3678. County Recorder to attend with abstract of titles.
3679. Supervisors to use information and direct entry of mortgages, etc.
3680. Preservation of evidence taken before the Board.
3681. Supervisors may direct new assessment to be made, etc.; notice to persons interested.
3682. Clerk of Supervisors to record proceedings, alterations, etc.; oath of Clerk as to correctness of record.

3672. The Board of Supervisors of each county must meet on the first Monday of July in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the fourth Monday in July.

Supervisors, when to equalize assessment.

NOTE.—See "Power to equalize," discussed in note to Sec. 3693, post. See, also, note to Sec. 3607, ante; C. P. R. R. Co. vs. Bd. Sup. Placer Co., and People vs. C. P. R. R. Co., cited therein.

3673. The Board has power to determine all complaints in regard to the assessed value of property, and may, except as prohibited in this Title, correct any valuation by adding or deducting such sum as may be necessary to make it conform to the actual cash value.

Supervisors empowered to correct assessment.

NOTE.—Rev. Stats. Ohio, 1854, Sec. 39; Stats. Ind., p. 322, Sec. 10; Stats. Ill., p. 342, Sec. 1. This power to equalize does not go to the extent of striking off any property listed, or of adding property to the list.—See People vs. Reynolds, 28 Cal., p. 107; and The State ex rel. Attorney General Love vs. Bd. Sup. San Francisco, certiorari, special Sept. term, 1872, Sup. Ct. Cal. See Sec. 3681, post.

3674. No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the Board a written application therefor, verified by his oath showing the facts upon which it is claimed such reduction should be made.

No reduction to be made unless on application of person assessed.

NOTE.—See note to Sec. 3673, ante. The application under oath here required is a jurisdictional fact; if it is omitted the Board have no power to alter the assessed valuation.—Ex rel. Attorney General vs. Bd. Sup. San Francisco, Sept. special term, 1872, Sup. Ct. Cal. See note to Sec. 3607, ante.

3675. Before the Board grants the application or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application touching the value of the property of such person.

Examination of person assessed by Supervisors for purposes of equalization.

No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

NOTE.—See notes to two preceding sections, and Sec. 3607, ante.

Supervisors may subpoena witnesses and take evidence.

3676. Upon the hearing of the application the Board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

Assessor and Deputy to attend upon hearing of application

3677. During the session of the Board the Assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the Board.

NOTE.—Stats. 1861, p. 427, Sec. 23.

County Recorder to attend with abstract of titles.

3678. The County Recorder must, when required during the session, attend on the Board with an abstract of all unsatisfied mortgages and trust deeds given to secure the payment of loans and other liens on record in his office.

Supervisors to use information and direct entry of mortgages, etc.

3679. The Board must use the abstract and all other information it may gain from the records of the County Recorder or elsewhere in equalizing the assessment of the property of the county, and may require the Assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the Assessor before the delivery of the assessment book to the Clerk of the Board; but no person must be assessed under this section except a resident of the county.

NOTE.—Stats. 1861, p. 419, Sec. 23.

Preservation of evidence taken before the Board.

3680. In all cases where the Board either adds to or decreases or alters the valuation of property made by the Assessor, the Clerk of the Board must note down and preserve substantially the evidence upon



which such addition, decrease, or alteration was based. And upon the demand of the applicant the Board must declare the legal principles it has been governed by in ascertaining the valuation adopted by it.

3681. During the session of the Board, it may direct the Assessor to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries) when any assessment made by him is deemed by the Board so incomplete as to render doubtful the collection of the tax; but the Clerk must notify all persons interested, by letter deposited in the Post Office or Express, postpaid and addressed to the person interested, at least ten days before action taken, of the day fixed when the matter will be investigated.

Supervisors may direct new assessments to be made, etc.; notice to persons interested.

NOTE.—See Secs. 3672, 3673, 3674, ante, and notes. *People vs. Reynolds*, 28 Cal., p. 107, held that Board may require Assessor to enter other property on the assessment roll.

3682. The Clerk of the Board must record in a book to be kept for that purpose all changes, corrections, and orders made by the Board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the Board, and on or before the first Monday of August must deliver the assessment so corrected to the County Auditor, and accompany the same with an affidavit thereto affixed, subscribed by him, as follows:

Clerk of Supervisors to record proceedings, alterations, etc.

“I, —, do swear that, as Clerk of the Board of Supervisors of — County, I have kept correct minutes of all the acts of the Board touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered

Oath of Clerk as to correctness of record.

in the book, and that no changes or alterations have been made therein except those authorized.”

NOTE.—In the performance of the duties of a Board of Equalization prescribed by the Code the Board of Supervisors act with judicial powers.

## ARTICLE II.

### STATE BOARD OF EQUALIZATION.

#### SECTION 3692. General powers of Board.

3693. To equalize assessments, how.

3694. Equalization, how made when County Auditor fails to forward statement.

3695. Clerk to transmit a statement to each County Auditor.

3696. Board to notify Supervisors of amount of tax to be levied.

3697. Penalty for refusing to obey rules and regulations of Board.

3698. District Attorney to prosecute Assessor fraudulently assessing property.

3699. Clerk and members of Board may administer oaths.

3700. Salary of members.

3701. Salary of Clerk.

3702. Traveling expenses.

3703. Official bonds of members of the Board.

3704. Duty of Board upon failure of county Boards to appoint Assessors, etc.

3705. State Board may extend time.

General  
powers of  
Board.

3692. The powers and duties of the State Board of Equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business;
2. To prescribe rules and regulations to govern Supervisors when equalizing and Assessors when assessing;
3. To make out, prepare, and enforce the use of forms in relation to the assessment of property;
4. To hold regular monthly meetings at the State Capitol on the second Monday in each month, and such special meetings as the Chairman may direct;
5. To meet at the State Capitol on the third Monday in August, and remain in session until the third Monday in September;

6. At such meeting to equalize the valuation of the <sup>Same.</sup> property of the several counties in the State, and fix the rate of State taxation;

7. To visit as a Board, or by the individual members thereof, the several counties of the State, for the purpose of inspecting the property and learning the value thereof;

8. To call before it or any member thereof on such visit, any officers of the county, and to require them to produce any public records in their custody;

9. To issue subpoenas for the attendance of witnesses, or the production of books before the Board or any member thereof—which subpoenas must be signed by a member of the Board and may be served by any person;

10. To appoint a clerk, prescribe and enforce his duties;

11. To report to the Governor annually a statement showing:

*First*—The acreage of each county in the State that is assessed;

*Second*—The amount assessed per acre;

*Third*—The aggregate value of all town and city lots;

*Fourth*—The aggregate value of all real estate in the State;

*Fifth*—The kinds of personal property in each county, and the value of each kind;

*Sixth*—The aggregate value of all personal property in the State;

*Seventh*—Any information relative to the assessment of property and the collection of revenue;

*Eighth*—Such further suggestions as it shall deem proper;

12. To keep a record of all its proceedings.

NOTE.—Under the authority of this section the following rules and regulations were adopted by the State Board of Equalization, March 18th, 1872:

*To the County Board of Supervisors and County Assessor of — County:* By authority of the thirty-six hundred and ninety-second section of the "Political Code of the State of California," approved March twelfth, eighteen hundred and seventy-two, the following rules and regulations are prescribed by the State Board of Equalization for the government of County Boards of Supervisors sitting as a Board of Equalization, and County Assessors:

I. In addition to the affidavit required by section thirty-six hundred and thirty of the Act above mentioned, and before taking from any person the statement required by section thirty-six hundred and twenty-nine of said Act, the Assessor shall administer to such person an oath that he or she will true answer make to all questions put to him or her concerning all matters contained in said last mentioned section.

II. All property must be assessed at its "full cash value." By the term "*full cash value*" is meant "the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor."

III. Assessors must not assess the property of any person in "gross," but must require from each person assessed a specific statement, setting forth in detail and in accordance with the assessment lists, the quantity, number, or kind of each class of property assessed, and the value of the same.

IV. Assessors are hereby instructed to use the form of statement or assessment list adopted and furnished by the State Board of Equalization; and in all cases to take statements (sworn to before filing), signed by the person assessed, which should be carefully preserved in the archives of the office of the Assessor.

V. In the assessment of real estate the lands must be classified on the lists according to quality, if the same be practicable. A classification according to the respective values of different portions of the land, if the same be not all of the same quality, is always practicable, and must be made and so returned to this Board. (See section thirty-six hundred and fifty-five of said Act.)

VI. Great care and diligence should be used in the description of real estate. Where United States surveys have been made they should be followed; but in other cases the metes and bounds should be carefully given; and where patents, as in case of Spanish ranchos, have issued, the description contained in such patent

may be safely adopted; and Assessors should be heedful, where sales of any portion of a tract have taken place, to exclude such portions by definite description.

VII. The copy of the assessment roll for the year eighteen hundred and seventy-two, which the State Board of Equalization requires for its use (the books for which will be prepared and forwarded by said Board), should be made contemporaneously with the original assessment roll, or sooner if that be possible, in order that the State Board of Equalization may be advised at the earliest practicable moment of the value of the properties assessed in each county. In this copy it will not be necessary to enter a minute description of the real estate, but only the number of acres and special designation, if (as in the case of Spanish ranchos) the tract had any, and in other cases by United States divisions and subdivisions. For personal property the entire roll need not be copied, but only so many examples of assessment—say forty or fifty—as shall clearly show the different species of property and the price at which it is valued. It should be full enough to enable the Board to see how each class of property is assessed in a particular county. The aggregate amount of personal property assessed to each person should be carried out. Have the amounts added up and the totals carried out, so that the Board can ascertain the “total value” of the assessment, and the “total full cash value” of all property.

The following other rules and regulations were adopted by the State Board of Equalization March twenty-seventh, eighteen hundred and seventy-two:

By authority of an Act of the Legislature, approved March sixteenth, eighteen hundred and seventy-two, entitled “An Act to put into immediate effect certain parts of the Political and Penal Codes,” the following rules and regulations are prescribed by the State Board of Equalization for the government of County Assessors, and County Boards of Supervisors sitting as Boards of Equalization:

**RULE I.**—The design of the Code in the matter of assessing and collecting the public revenue is to carry into effect the constitutional requisition that all property in this State shall be taxed in proportion to its value, and that taxation shall be equal and uniform. To this end the Code requires the assessment of all taxable property in the State to be first completed before the rate of State or county taxation is determined. The assessment must be completed on or before the first Monday of July of each year, and the equalization

by the County Boards of Equalization must be completed on or before the first Monday in August. All property must be assessed at its "full cash value," and the Code does not permit any deduction from such "full cash value" on account of any indebtedness of the owner, or on any account whatever.

**RULE II.**—What is known as a **SPECIAL DEPOSIT** of money, or other valuables, in a bank, or with a banker, or other person—that is to say, a deposit by the terms of which the custodian of the deposit has no right to the use of the same, but is merely charged with the duty of safely keeping it for the benefit of the depositor—is not to be assessed to such bank, banker, or other person; but such deposit must be assessed to the depositor. In case such depositor resides in another county, the Assessor must immediately, by mail or express, inform the Assessor of the proper county of the nature, amount, and place of such deposit, and of the name of the depositor. In case such depositor is absent from the State the deposit must be assessed to the bank, banker, or other person in whose keeping the same remains, specifying in the assessment that said bank, banker, or other person is assessed for such deposit as the agent of the owner, naming such owner.

**RULE III.**—Banking corporations, and all banks and banking firms or associations, or persons doing a banking business, must be assessed for the full amount of money, gold dust or bullion on hand (except the special deposits mentioned in Rule No. II); and in addition thereto, under the head of solvent debts, all their loans, and all solvent debts due them must be assessed at the several "full cash values" thereof, without any deduction on account of any indebtedness, and notwithstanding the depositors and creditors of such corporations, banks, banking firms, associations, or persons may have been or may be liable to be assessed for their said deposits or credits, as solvent debts due them.

**RULE IV.**—The term "**SOLVENT DEBTS**," includes all money deposited with or owing by any such institution, or person mentioned in Rule No. III, and such debts must be severally assessed at their full cash value, as solvent debts, to the depositors, or such other persons as at the time of assessment may be the owners or holders of such debts.

**RULE V.**—In assessing any debts due any person, association, or corporation, the present cash value of the debt is to be ascertained, as near as may be, by taking into consideration the nature of the indebtedness, the ability of the debtor to pay the same, in whole

or in part, the character and sufficiency of the security, if any there be, the times when payable, and such other circumstances as have a present and direct effect upon the value. Care should be taken so as not to assess a deposit in a bank, or money loaned to the depositor or person loaning the money *as money*, but such property must be assessed at its value as a solvent debt.

**RULE VI.**—If there be any difficulty in ascertaining the “full cash value” of any property, real or personal, resort must be had to the rule of interpretation prescribed by the Code, which is, “the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.”

**RULE VII.**—Assessors must not assess the property of any person in “gross,” but after demanding and receiving from each person to be assessed a specific statement, setting forth in detail and in accordance with the assessment lists the quantity, number, or kind of each class of property assessed, the Assessor will then fix the proper values at which the several properties are to be assessed according to his own judgment, governed and guided by the requirements of the Code and these Rules. If the person being assessed make any statement of the value of the property, or any portion thereof, whether under oath or not, the Assessor may consider the same, but will not be bound thereby, but must assess such property at its “full cash value.”

**RULE VIII.**—Assessors must not accept returns or statements from agents for persons when the persons themselves can be found in the county.

**RULE IX.**—The name of every person subject to taxation must be entered in the Assessor's daybook, whether such person has any assessable property or not.

**RULE X.**—The duplicate assessment book required by Section 3732 of the Political Code must in all cases be prepared as in said section required, and this Board will not in any case exercise the power given it to dispense with said duplicate. Provision has been made for the proper compensation of the Auditor for preparing said duplicate.

**RULE XI.**—Assessors are requested carefully to study all the sections of the Political Code relative to the assessment of property, numbered from 3627 to 3651, inclusive, found upon pages 22 to 27, inclusive, of the volume entitled “Provisions of the Codes relative to Revenue,” which will be provided them. By consulting Sections 3632, 3633, 3634, 3648, and 3649, above mentioned, and Sections 429, 430, and 19 of the Penal Code, contained in the same volume, Assessors will

perceive they are clothed with ample means to discover taxable property and ascertain the value thereof, and power to enforce obedience to the law on the part of persons liable to assessment. Where occasion requires it, these powers should be used without fear or hesitation. The liability incurred by Assessors for neglect of duties should also be carefully observed. (Vide Secs. 3656, 3660, 3661, 3662, 3697, 3698.)

**RULE XII.**—The copy of the assessment roll for the year 1872, which the State Board of Equalization requires for its use (the forms for which will be prepared and forwarded by said Board), should be made contemporaneously with the original assessment roll, or sooner if that be possible, in order that the State Board of Equalization may be advised at the earliest practicable moment of the value of the properties assessed in each county. In this copy it will not be necessary to enter a minute description of the real estate, but only the number of acres and special designation, if (as in the case of Spanish ranchos) the tract had any, and in other cases by United States divisions and subdivisions. For personal property the entire roll need not be copied, but only so many examples of assessment—say forty or fifty—as shall clearly show the different species of property and the price at which it is valued. It should be full enough to enable the Board to see how each class of property is assessed in a particular county. The aggregate amount of personal property assessed to each person should be carried out. Have the amounts added up and the totals carried out, so that the Board can ascertain the “total value” of the assessment, and the “total full cash value” of all property.

**RULE XIII.**—Great care and diligence should be used in the description of real estate. Designations of sections, quarter sections, and quarter quarter sections of land, after the manner of description used in the United States Land Offices, may be adopted. Large ranchos may be described by the best known name by which such ranchos are usually known, as for instance, “the Suscol rancho,” situated in \_\_\_\_\_ County, bounded on the north by \_\_\_\_\_, on the east by \_\_\_\_\_, on the south by \_\_\_\_\_, on the west by \_\_\_\_\_, giving the outboundaries with reasonable certainty. Where sales of any portion of a tract have been made, such portions should be excepted from the general description by describing them with such reasonable certainty as may be practicable, as for instance, “excepting that



portion of said tract sold to (or owned by) A. B., bounded on the north by," etc.

**RULE XIV.**—These rules are to be taken as additions to and modifications of the Rules issued by this Board under date of March eighteenth, eighteen hundred and seventy-two. Further Rules will be adopted from time to time, as necessity may require.

The following additional rules were adopted April 9, 1872:

**RULE XV.**—Growing crops should be separately assessed at their full cash value at the time of assessment. On account of the difficulty of determining the value of such property early in the season, it is recommended that the time for assessing growing crops should be postponed to a later period in the season, when the crop is far enough advanced to enable the Assessor to fix a fair valuation.

**RULE XVI.**—In Section 3640 of the Political Code the words "capital" and "property" mean the same thing, to wit: property; and where all of the same has been assessed to a firm or corporation the owner or holder of any stock in such firm or corporation should not be assessed for such stock.

**RULE XVII.**—In demanding a list from a railroad company the Assessor should require from the proper officer thereof a statement:

*First*—Of the whole number of miles of railroad belonging to such company in the State, and the number of miles lying in his county.

*Second*—The whole amount of rolling stock belonging to such company in the State, and the proportion of such rolling stock taxable to such company in his county, pro rata, in conformity with the requirements of Section 3663 of the Political Code. The rolling stock should be separately assessed from other property of the railroad company.

**RULE XVIII.**—Railroads should be assessed at the full cash value per mile for each mile of railroad in the respective counties in which railroads lie. In determining this value the rule established by the Code should be kept in view, and Assessors should be governed by the same rules and circumstances which influence their judgment in fixing the value of other property. Railroad buildings and other property belonging to railroad companies should be assessed separately from the land and track.

**RULE XIX.**—Salt marsh and tide lands, swamp and

overflowed lands, school lands, and all other lands purchased of the State, by payment in whole or in part, must be assessed at their full cash value to such purchasers, or their assignees, or legal representatives.

Preemption claims to lands should be listed as the possession interest and claim of A. B. in and to the tract of land described as follows (describing the land):

If, however, the entire purchase money has been paid by the preëmtor, and a certificate issued therefor, the land itself must be assessed to such preëmtor, notwithstanding the patent has not issued.

**RULE XX.**—An Act entitled “An Act concerning the assessment of Animals,” approved March 30, 1872, and printed as an addition to the last provisions of the Code affecting revenue, distributed by this Board, is repealed by Sections 18 and 3891 of the Political Code, and will not govern Assessors in the discharge of their duties.

**RULE XXI.**—What are known as consigned goods, in the possession of any person in this State, consigned to such person from any place out of this State for sale, are required by Section 3638 of the Political Code to be assessed as other property. The only exception allowable to this general requirement is in cases where goods consigned from a foreign State or country remain, and at the time of assessment are in unbroken or unopened original packages in the hands of the importer or consignee.

**RULE XXII.**—No specific tax, as in the old revenue law, is laid upon dogs by the Code; but as these animals are property, they, like other animals, must be assessed at their full cash value. Under the Code the Supervisors of counties may levy a special tax on dogs after the 1st day of January, 1873.

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3693. When the property is found to be assessed above or below its full cash value, the Board must add to or deduct from the valuation of:

1. The real estate;
2. Improvements upon such real estate;
3. The personal property, except money;
4. The amount of money;

—Such per centum respectively as is sufficient to raise or reduce it to the full cash value.

**NOTE.**—We give below at some length a review of the questions arising upon the various provisions of

this Title regarding the assessment and equalization of taxes:

The provision of the State Constitution concerning taxation is as follows: "Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law. But Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated." (Art. XI, Sec. 13.)

The questions which have arisen under this section are:

1. Is a law authorizing a Board of Equalization to raise or reduce valuations of property, made by Assessors for the purpose of taxation, constitutional?

The first sentence of the section quoted requires that "taxation shall be equal and uniform throughout the State." How is this to be accomplished if each Assessor of the several districts of a county, or of the various counties of the State, has the exclusive power of selecting a standard of valuation which is subject to no revision or alteration? When this provision of our State Constitution was adopted, Boards of Equalization (or officers intrusted with like powers) existed in almost every State in the Union which contained a constitutional provision similar to the one above referred to. It is, then, a fair presumption that our Constitution, by this declaration, contemplated the organization of such Boards. This position is strengthened by the succeeding clause, which declares: "All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law." These subjects, however, will be discussed in another portion of this note. The first Revenue Law enacted in this State constituted the several Courts of Sessions Boards of Equalization, "with power to equalize the valuation made by the Assessor, either by adding thereto or deducting therefrom such sums as shall appear to them just and equitable." (Stats. 1850, p. 128.) This law was passed less than four months after the adjournment of the Constitutional Convention. The many provisions of the Constitution and the debates thereon were fresh in the minds of all; and the Legislature (comprising, as it did, some of the original framers of that instrument—Messrs. Aram, Brown, Covarubias, Crosby, De la Guerra, Lippincott, McDougall, Moore, Steuart, Tefft, and Vermeule) were seeking to carry out for the first time its intentions on the subject of taxation. Each successive

Revenue Law passed since that time has provided for Boards of Equalization with like powers. The policy of such a provision has always been recognized as wise and beneficial, and no voice has ever been lifted against it. The exercise of this power, however, by the county Boards has, at times, called forth decisions from the Supreme Court, which are reviewed.

In *Patton vs. Green*, 13 Cal., p. 325, the Court decided that "the Board of Equalization has no power to raise the valuation of land without notice to the owner." The question involved in this case was not the power of the Board to raise the valuation, but simply that the valuation could not be raised without notice to the owner. It was intimated that this notice must be given only "because the words of the statute seem to require it." The case turns upon questions raised under the statute—not under the Constitution—and the Court acknowledge the power of the Board to raise the valuation, if the method of procedure pointed out by law is strictly pursued.

In *People vs. Reynolds*, 28 Cal., p. 107, the constitutional question is not discussed. The case is similar to that of *Patten vs. Green*; and it was held that under the statute of 1861 the Board could not enter on the assessment roll any property not already thereon. The Court expressly recognize the right of Boards of Equalization to raise the valuation fixed by Assessors, and declare "in matters relating to the assessment of property the Board of Equalization may hear and determine complaints respecting the same, and may correct errors in the assessment roll by diminishing or increasing the valuation fixed by the Assessor upon the property therein described." This case is affirmed in *People vs. Flint*, 39 Cal., p. 670.

In the *People vs. McCreery*, 34 Cal., p. 432, given at some length in note to Sec. 3607, ante, the Court, in speaking of the curative power of the Legislature over assessment rolls defective in form, say: "It was held upon the authority of *People vs. Hastings*, 29 Cal., p. 449, that the very foundation of proceedings for apportioning and collecting a tax upon property was the valuation; that such valuation must, under the rule of the Constitution, be made by the Assessor; and the Legislature could not supply this defect if it existed. All the details in making the valuation are subject to legislative control, and if error has intervened it is subject to the curative power of the Legislature, under the same principles that are applicable to the proceedings

subsequent to the valuation. But there must be a valuation in fact made by the Assessor," etc. This language of the Court simply declares that the Assessor shall set some value to the property which he lists or assesses. This valuation is not necessarily conclusive; in fact, from the language of the Court, it appears that the Legislature can control the details in making the valuation as well as in correcting errors subsequent thereto.

But in this same decision the Court, while debating these constitutional questions, expressly recognize the powers of the County Boards to alter the valuations made by the Assessors. Justice Rhodes, in delivering the opinion of the Court, says: "The valuation, as we have remarked, is to be made by the Assessor, and the province of the Board is to correct errors by adding to or deducting from the valuation," etc. This same power is also conceded to the Boards in *People vs. Arguello*, 37 Cal., p. 524, and *Central Pacific Railroad vs. Supervisors of Placer County* (April term, 1872), cited in note to Sec. 3607, ante.

An error in valuation must be one of figures. The power alone to correct errors in valuation authorizes the Board to change any and all figures or numerals expressing the value of property. But the Court is more explicit. It follows the tautological expression of the statute, and declares that the correction may be made by adding to or deducting from the valuation. The exercise of this power is not denied in any reported case, but is expressly declared, or silently admitted, in *Guy vs. Washburn*, 23 Cal., p. 111; *Patten vs. Green*, 13 Cal., p. 327; *Cowell vs. Doub*, 12 Cal., p. 273; *People vs. Reynolds*, 28 Cal., p. 113; *Central Pacific Railroad vs. Placer County*, 32 Cal., p. 582; *People vs. Arguello*, 37 Cal., p. 524; *People vs. Flint*, 39 Cal., p. 670; *Central Pacific Railroad vs. Supervisors of Placer County* (April term, 1872).

The question then as to the right of Boards of Equalization to raise or reduce the valuation of property is too well settled to be disturbed. It has been acquiesced in by numerous decisions and has been exercised ever since the formation of the State, and cannot now be an open question.

But from the clause in the Constitution which provides that "Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situ-

ated," it is argued, and our Courts have intimated (*People vs. McCreery*), that this phrase was intended to give to the Assessor the power to fix the valuation of property. It may, however, be well doubted whether it is right or whether the Court intended to place this construction upon it. The sentence immediately preceding it says that "all property in the State shall be taxed in proportion to its value, to be ascertained as directed by law." In the interpretation of constitutions, as well as all other instruments, some effect should be given to every clause. If, then, the provision declaring that Assessors should be elected means that Assessors must also determine the valuation, what office does the clause "value to be ascertained as directed by law" perform? Is it not surplusage, if this is to be taken as the correct exposition? Would it not have been sufficient to have said, "all property shall be taxed in proportion to its value, but Assessors and Collectors shall be elected," etc? Certainly it appears that this would have been all that was requisite under such a construction. It may be said, however, that the word "Assessor" had at the time of the adoption of the Constitution a peculiar meaning, and that the term "Assessors" is defined to mean "those appointed to make assessments," and that "assessment" is "determining the value of a man's property or occupation for the purpose of levying a tax."—*Bouv. Law Dict.*

The Constitution does not in terms fix the powers or duties of the Assessor.—*Attorney General vs. Squires*, 14 Cal., p. 18. It simply provides for his election. There is nothing in the instrument which prescribes what particular functions an Assessor may exercise or what he may be restrained from doing. The Legislature then can, if it is not expressly prohibited by the Constitution, require from the Assessor the commission or omission of any act in relation to taxation. No part of the provision relating to taxation is self-executing, and by non-action the Legislature could altogether defeat it. If, in the exercise of its omnipotent power, the Legislature should direct the Assessors to enter on their rolls only the names of the individuals with a list of their property to be taxed left unvalued, and should further provide for the appointment of appraisers to estimate and establish the valuation of the property on the Assessor's roll, it is difficult to perceive what constitutional objection could be made thereto; or, if surveyors were authorized to be appointed to discover and

list individuals and their property, and Assessors were allowed only to affix to the lists the valuation, what particular clause of the Constitution can be cited as an inhibition of the exercise of this power by the Legislature? The Assessor still exists in name as a constitutional officer, and he performs certain functions relating to taxation in both cases mentioned.

The Constitution says "Assessors and Collectors" must be elected, etc. If the term Assessor carries with it the duties of the office, so does the word Collector. Collector is defined to be "one appointed to receive taxes or other impositions."—Bouv. Law Dict.

In Attorney General vs. Squires, 14 Cal., p. 17, the Supreme Court say: "The error of the argument is in supposing that, because Assessors and Collectors are constitutional officers, every portion of the revenue must necessarily pass through their hands. We do not see that it would be at all unconstitutional to authorize every taxpayer to pay his taxes directly into the Treasury. The law authorizes many acts—such as the service of papers, etc.—which seem appropriately to belong to the Sheriff's office, to be done by other parties or private persons. If the Legislature could do away with the tax entirely \* \* \* it is difficult to see why they could not change the hands that were to collect it. The duties of Tax Collectors are wholly undefined by the Constitution, as also their services and compensation; these are left to the legislative direction." This applies to Assessors as well as Collectors.

It would be folly to say that a provision in the Constitution relating to the election of Assessor carries with it a restraint on all legislation to regulate his duties or restrain him from the exercise of any function not guaranteed to him by the express terms of the Constitution. But if the word "Assessor" has a peculiar meaning and the term itself is a complete description of all the powers of the office, then it may be said that any law which attempts to interfere with the exercise of any duties recognized as belonging to such an officer at the time of the adoption of the Constitution, is void. When the Constitution of this State was framed, there was no officer known as "Assessor" within its borders. If the word "Assessor" had a meaning which conveyed a precise description of his duties, where shall we turn to find those duties defined? When the State Constitution was adopted there were some thirty States comprising the Union. Each of these States had officers to carry out certain provisions

of their revenue laws, and in most instances called these officers Assessors.

These Assessors did, it is true, in most cases fix a valuation on property which they assessed, but an examination of the laws of each State shows that this valuation was subject to the control of Boards of Equalization (or certain officers), empowered to raise or lower it. See Alabama Digest, p. 418; Arkansas Digest, 1848, p. 874; Connecticut Comp. Laws, p. 848; Delaware Code, p. 27; Florida Digest, p. 97; Georgia Dig., p. 1077; Illinois Rev. Stats., p. 992; Indiana Rev. Stats., p. 127; Iowa Rev. Laws, p. 114; Kentucky Rev. Stats., p. 257; Louisiana Laws of 1849, p. 136; Maine Rev. Stats., 1840, p. 88; Maryland Stats. 1850, ch. 337; Massachusetts Rev. Stats., 1836, p. 81; Michigan Rev. Stats., 1832, p. 82; Mississippi Code, 1848, p. 189; New Jersey, Elmer's Dig., p. 552; New York Rev. Stats., 1836, Vol. I, pp. 385, 394, 408; Ohio, Swan's Rev. Stats., p. 917-920; Pennsylvania, Dunlap's Laws, p. 560; Missouri Stats., 1845, p. 96; Tennessee Code, 1858, p. 201; Virginia Rev. Laws, p. 121; Vermont Stats., 1850, p. 118; Wisconsin Laws, 1849, p. 146.

If, then, the valuation fixed by the Assessor was not final or conclusive in a single State in the Union, why should it be contended that it is so in California, simply because they are required to be elected by the people of the district where the property is situated?

The provision is not so unusual or strange as to authorize any peculiar or forced construction. Many States require all township or county officers to be elected by the qualified electors thereof, while other States require only certain county officers to be thus elected. Provisions to this effect are found in the Constitutions of Ohio (Const., Art. 10, Sec. 1), Indiana (Art. 6), Arkansas (Art. 6), Texas (Art. 4, Sec. 13), Iowa (Art. 5, Sec. 13), Michigan (Arts. 6-10, Secs. 17-3), Wisconsin (Art. 6, Sec. 4), Missouri (Arts. 4, 5, Secs. 23-20), Alabama (Art. 5, Sec. 75), Illinois (Art. 8-5, Secs. 7-29), Mississippi (Art. 5, Sec. 19), Pennsylvania (Art. 6, Secs. 1-7), New Jersey (Art. 8, Secs. 6, 7), New York (Art. 10, Sec. 1), New Hampshire (Part 2, Sec. 7), and Massachusetts (Amdt. Art. 19).

Almost every one of these States mentioned provide for the election of a Sheriff by the qualified electors of the county for which he is chosen. But because the service of papers belongs peculiarly to the Sheriffs, it has nowhere been contended that a statute could not authorize such an act to be done by appointed officers or by private parties.



If, then, other persons than Sheriffs can serve papers and other persons than Collectors be authorized to collect taxes, why must a valuation of property be made only by Assessors?

But let it be granted that the Constitution requires a valuation in fact to be made by the Assessor, duly elected, etc., and then examine the case in another light.

It is not difficult to uphold the constitutionality of the State Board of Equalization even were the Constitution a grant of power and the Legislature confined to the exercise of the powers expressly conferred by it, or those which follow by implication.

Section 13 of Article XI of the State Constitution, among other things, requires, in relation to the revenue, the exercise of at least three powers: assessment, equalization, and collection. The mode or manner in which these are to be exercised is, with the exception that the particular officers who exercise in part the first and last named powers must be elected by the people of their district, etc., left to the discretion of the Legislature. But in order to carry out the requirements of the Constitution each of these powers must be exercised. The first definition of "equalize" given by Webster is, "to make equal; to cause to correspond, or be in like amount or degree as compared; as to equalize accounts, burdens, or taxes." And by the same lexicographer "equalization" is defined to be "the act of equalizing." Take these definitions in connection with the definition given of "assessment," and it will be found that the powers involved are separate and distinct. It is true that a knowledge of some of the facts necessary to make an assessment may also be necessary to the making of a correct "equalization," but it does not necessarily follow that the one who performs the latter duty thereby becomes an Assessor. It is only after the duty of the Assessor is fully performed that the exercise of the power of equalization is commenced. It is a power intervening between the "assessment" and the "collection" of taxes, recognized, as we have already seen, by every State in the Union, and certainly nowhere prohibited by our State Constitution.

It would be absurd to say that a portion of the duties relating to taxation and assessment cannot be intrusted to other persons than Assessors and Collectors. In *Ross vs. Whitman*, 6 Cal., p. 361, this point has been

expressly decided with reference to certain duties of the Controller of State (a constitutional officer, and required to be elected), made by the Act creating the State Board of Examiners, Chief Justice Wallace, then Attorney General, argued the case in favor of the legislative power. The Court say:

"Where any of the duties or powers of one of the departments of the State Government are not disposed of or distributed to particular officers of that department, such powers or duties are left to the disposal of the Legislature. When, therefore, the Legislature appointed a Board to perform a certain duty which theretofore had been performed by the Controller of State, but which is not prescribed by the Constitution as the peculiar duty of that officer, we hold the act valid and binding, because the power of the Legislature is supreme except when it is expressly restricted."

In view of this decision, will any one contend that the duties or powers of the Legislature over taxation are entirely exhausted by Section 13 of the Constitution, and that no powers or duties relating thereto are at its disposal? We conclude, therefore, that the power of equalization is included in the power of taxation, and is subject to legislative control, unrestricted by the Constitution except as to uniformity and equality.

2. Does the Constitution require the officers intrusted with the equalization of the valuation of property assessed for taxation to be elected?

We have seen that a law which restrained an Assessor from making any valuation would not on that account be unconstitutional. Admitting, however, that it would be, it is shown that the functions of equalization were totally separate and distinct from those pertaining to assessment. If either of these positions is correct, then it is plain that officers charged with the equalization of the values of property for the purpose of taxation are not required by the Constitution to be elected. This note has already shown that the Supreme Court of the State, through a large number of decisions, have affirmed the constitutionality of the power of equalization as exercised by the Boards of Supervisors, and that it is no longer an open question. This settled opinion of the Court cannot be supported if it rests solely upon the circumstance of the election of the County Boards. The State Board of Equalization consists of members appointed by the Governor; but if for this reason the Act creating it is unconstitutional, then the Acts creating County Boards of Equalization are also unconstitutional, and so would be the Act cre-

ating the State Board of Examiners, which the Supreme Court has sustained.—See *Ross vs. Whitman*, supra.

It has been said that "a Board of Equalization is simply a Board of Assessors. The Supervisors or County Boards are elected, \* \* \* and hence there is no question about their powers." This certainly must be regarded as a very loose and unsupported statement. The power of our Boards of Supervisors cannot be upheld by such an argument. The provision of Section 13, Article XI of the Constitution is as follows: "But Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated."

Supervisors are elected by districts comprising but a small portion of the county. Will it be contended that the Supervisors of Districts Nos. 1, 2, and 3 can perform the duties of an Assessor in relation to property situate in Districts Nos. 4 and 5? They are not elected by the qualified electors of Districts 4 and 5, where the property the valuation of which is under consideration is situated. If, as it is said, they are in fact Assessors, and Assessors alone can determine the final valuation of property subject to no revision or alteration, then certainly Supervisors elected for one district cannot determine the value of property in another. The *People vs. Hastings*, 29 Cal., p. 449, is directly against such a proposition. In that case the Court say: "The constitutional requirements are not satisfied merely by an assessment made in the manner directed by law, but it is also provided that the Assessors of town, county, or State taxes should be elected by the qualified electors of the district, county, or town in which the property to be taxed is situated; that is to say that the assessment must be made by a person elected as an Assessor by the qualified electors of such district, county, or town.

In this chosen authority for those who say that the State Board of Equalization is unconstitutional—the case of *The People vs. Hastings*—the Assessor who made the assessment was elected by the qualified electors of the City and County of Sacramento, which is a different district from that of the City of Sacramento. It was not made by an Assessor elected by the qualified electors of the district where the property was situated—the City and County of Sacramento not being the same district as that of the City of Sacramento. Certainly,

if the Assessor elected by the electors of a county cannot make an assessment for a city lying wholly therein, then a Supervisor (even if he be an Assessor) could not assess property situated in a district which had no voice in his election. The proposition seems too absurd to need further argument. The decisions of the Courts sustaining County Boards of Equalization rest on some more secure foundation than the one selected. "In the exposition of Constitutions, as of inferior laws, the solemn, deliberate, and long-settled precedents of Courts, and the practice and acquiescence of Governments and people, possess controlling weight."—*Ferris vs. Coover*, 11 Cal., p. 175. More than twenty years of practice and acquiescence, and a long line of precedents, affirm the constitutionality of the powers exercised by County Boards of Equalization. No objection can be urged against the power of the Legislature to create a State Board that does not apply with like force to the exercise of the power to create County Boards. Both rest upon the same foundation; both must stand or fall together. That both will stand is no longer a question, for not only does the Constitution permit, but in order to carry out its provisions, imperatively demands their creation and existence. We conclude, therefore, that neither a State nor County Board of Equalization would be unconstitutional if appointed in any manner authorized by the Legislature. The argument that a State Board of Equalization is dangerous to the interests of the people, because it is not elective, would apply as well to the Supreme Court of the Federal Government and the Courts of many of our sister States, for a Board of Equalization is, for all practical purposes, a Court, where the action is between the people and an individual. Its responsibility is undoubtedly great, and it may be dangerous; but would it be any more safe if elected by the people of the State at large?

It was necessary to review these various questions at length, since they have been much discussed, and the provisions of the Code system of revenue have been, to a certain extent, the subject of criticism.

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forward  
statement.

3694. If the County Auditor fails to forward to the State Board of Equalization the statement provided for in Section 3728, the Board must make the equalization from any information it can obtain.

3695. When the equalization among the several counties is completed, the Clerk of the Board must

transmit to each County Auditor a statement of the per centum to be added to or deducted from the valuation of the property of his county.

Clerk to transmit a statement to each County Auditor.

3696. At the same time the Board must determine and transmit to the Board of Supervisors of each county the rate of the State tax to be levied and collected, which, after allowing for delinquency in the collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the Legislature for State purposes.

Board to notify Supervisors of amount of tax to be levied.

3697. Every person served with a subpoena who fails or neglects, without just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the Board, or to perform the duties prescribed therein, forfeits to the State five hundred dollars, to be recovered by action in the name of the Board, which action may be commenced and tried in any county of the State.

Penalty for refusing to obey rules and regulations of Board.

3698. Whenever the State Board of Equalization is satisfied that the Assessor or a Deputy Assessor of any county has knowingly, fraudulently, or corruptly assessed any property below its actual cash value, it must immediately inform the District Attorney of such county in writing of the facts that may have come to its knowledge, with a request that such Assessor or Deputy Assessor be prosecuted, and the District Attorney must at once comply with such request.

District Attorney to prosecute Assessor fraudulently assessing property.

3699. The Clerk or any member of the Board may administer and certify oaths.

Clerk and members of Board may administer oaths.

3700. The annual salary of each member of the Board appointed by the Governor is thirty-six hundred dollars, and the annual salary of the ex officio member is twelve hundred dollars.

Salary of members.

Salary of Clerk.

3701. The annual salary of the Clerk is twenty-four hundred dollars.

Traveling expenses.

3702. Each member of the Board and the Secretary thereof is entitled to repayment of all expenses incurred by him in traveling in the discharge of his duties, not to exceed annually one thousand dollars each, the amount thereof to be audited and allowed by the Board of Examiners, and paid out of the State Treasury.

Official bonds of members of the Board.

3703. Each member of the State Board of Equalization appointed by the Governor must execute an official bond in the sum of ten thousand dollars.

Duty of Board upon failure of county Boards to appoint Assessors, etc.

3704. If the Board of Supervisors of any county fails or refuses either:

1. To allow the Assessor to appoint a sufficient number of deputies to make the assessment; or,

2. To furnish the proper books or blanks for his use; or,

3. To furnish the Assessor necessary office room;  
—Then the State Board of Equalization may, upon the application of the Assessor, make the allowance, or furnish the proper books, blanks, or office room; and all the expense incurred in carrying into effect the provisions of this section must, by the Secretary of the Board, be certified to the Controller, who must, in his next settlement with the County Treasurer of any such county, require such Treasurer to pay the amount out of any funds belonging to such county.

NOTE.—This section was added by Act of April 1, 1872, cited in note to Sec. 18, ante.

State Board may extend time.

3705. The State Board of Equalization may, by an order entered upon its minutes, and certified to the County Auditor of any county, extend, for not exceed-



Same.

9. For the Pacific Railroad Fund, one hundred and five thousand dollars;

10. For the State Normal School Building Fund, seventy-five thousand dollars;

11. For the State Capitol Bonds Interest and Sinking Fund, thirty-five thousand dollars.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1, 1872; (Stats. of 1871-2, p. 886.) From the very nature of the subject, at each biennial session, the Legislature must fix and designate the amount of revenue to be raised for the succeeding two fiscal years, and authorize the State Board of Equalization to fix the rate of taxation therefor as in this section provided.—Subd. 2. A special school tax can only be levied after submission to qualified voters. Supervisors have nothing to do with it.—People vs. Castro, 39 Cal., p. 65. The constitutionality of Sec 3696, ante, and also of this section, was raised in the case of The People ex rel. Attorney General Love vs. Ashbury, Auditor of San Francisco County, at the October Term, 1872, of the Supreme Court of California, but the decision thereon had not been rendered at the time this Title of the Code went to press.

Supervisors  
to regulate  
county  
rate of  
taxation.

3714. The Board of Supervisors of each county must, on the first Monday of October, fix the rate of county taxes, designating the number of cents on each hundred dollars of property levied for each Fund; and must levy the State and county taxes upon the taxable property of the county.

When the  
Supervisors  
fail to levy  
such taxes,  
etc.

3715. The action of the State Board of Equalization, in fixing the rate of taxation for State purposes, is, in the absence of action by the Board of Supervisors, a valid levy of the rate so fixed, and imposes upon the Auditor, Tax Collector, and all other officers charged with the performance of any duties under the Revenue Law, the same obligations as if the Board of Supervisors had made the levy at the proper time.

Tax to  
operate as a  
judgment  
or lien  
against  
property.

3716. Every tax has the effect of a judgment against the person, and every lien created by this Title



has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

3717. Every tax due upon personal property is a lien upon the real property of the owner thereof from and after the time the personal property is assessed.

Tax on<sup>o</sup>  
personal  
property  
operates as  
a lien on  
real  
property.

3718. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

Tax on real  
property  
and tax on  
improvements  
a lien upon  
both.

NOTE.—Sec. 8, Art. I, State Constitution, requiring due process of law to deprive one of his property, and providing that compensation must be made for private property taken for public use, has no application to the exercise of State authority to collect taxes for the support and administration of the Government. See *High vs. Shoemaker*, 22 Cal., p. 363. The power of taxation under our Constitution is entirely unlimited in its extent, and in the means or method of its assessment and collection only by Sec. 13, Art. XI.

## CHAPTER VI.

### DUTIES OF THE AUDITOR IN RELATION TO REVENUE.

SECTION 3727. Auditor to enter in assessment book total valuations of property and show acreage of county.

3728. Auditor to prepare duplicate statement, showing what.

3729. Statements transmitted to Controller of State and Board of Equalization.

3730. Auditor to follow directions of State Board of Equalization in equalizing and assessing property.

3731. Auditor to compute and enter taxes against property.

3732. Delivery of duplicate assessment book to Collector, and Auditor's affidavit.

SECTION 3733. Auditor to retain original assessment book.

3734. Tax Collector charged with full amount of taxes levied.

3735. Auditor to verify all statements made by him.

3736. Transfer of assessment book from one Collector to another.

Auditor to enter in assessment book total valuations of property and show acreage of county.

3727. The County Auditor, as soon as the assessment book is delivered to him by the Clerk of the Board of Supervisors, must proceed to add up the valuations, and enter the total valuation of each kind of property and the total valuation of all property on the assessment book. The column of acres must show the total acreage of the county.

NOTE.—See "Liabilities on official bond," Secs. 947-985, inclusive, ante, and Sec. 176, Penal Code Cal., for omissions or failures in the performance of official duty.

Auditor to prepare duplicate statement, showing what.

3728. The Auditor must, on or before the third Monday in August of each year, prepare from the "assessment book" of each year, as corrected by the Board of Supervisors, duplicate statements, showing in separate columns:

1. The total value of all property;
2. The value of real estate;
3. The value of the improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money;
6. The number of acres of land.

Statements transmitted to Controller of State and Board of Equalization.

3729. The Auditor must, as soon as such statements are prepared, transmit by mail or express one to the Controller of State and one to the State Board of Equalization.

Auditor to follow directions of State Board of Equalization in equalizing and assessing property.

3730. As soon as the Auditor receives from the State Board of Equalization a statement of the per centum, if any, to be added to or deducted from the valuation of the property of his county, he must add to or deduct from each assessment the required per centum on the valuation thereof, as the same has been

equalized by the Board of Supervisors, and must enter the same in a column, provided with a proper heading, in the assessment book, counting any fractional sum, when more than fifty cents, as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar.

NOTE.—See note to Sec. 3727, ante.

3731. The Auditor must then compute and enter in a separate money column in the assessment book the respective sums, in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the State Board of Equalization.

Auditor to compute and enter taxes against property.

3732. On or before the fourth Monday of October he must deliver a copy of the corrected assessment book, to be styled "duplicate assessment book," to the Tax Collector, with an affidavit attached thereto, and by him subscribed, as follows:

Delivery of duplicate assessment book to Collector.

"I, —, Auditor of the County of —, do swear that I received the assessment book of the taxable property of the county from the Clerk of the Board of Supervisors, with his affidavit thereto affixed; and that I have corrected it and made it conform to the requirements of the State Board of Equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes, and acreage, as required by law, and that the copy to which this affidavit is affixed is a full, true, and correct copy thereof."

Auditor's affidavit.

3733. The original assessment book must remain in the office of the Auditor.

Auditor to retain original assessment book.

3734. On delivering the "duplicate assessment book" to the Tax Collector, the Auditor must charge

Tax Collector charged with full amount of taxes levied.

the Tax Collector with the full amount of the taxes levied, and forthwith transmit by mail to the Controller of State a statement of the amount so charged.

NOTE.—Hittell, ¶ 6202.

Auditor to verify all statements made by him.

3735. The Auditor must verify by his affidavit attached thereto, all statements made by him under the provisions of this Title.

Transfer of assessment book from one Collector to another.

3736. The Auditor, if the "duplicate assessment book" or the delinquent tax list is transferred from one Collector to another, must credit the one and charge the other with the amount then outstanding on the tax list.

NOTE.—Hittell, ¶ 6204. The note to the first section of this Chapter is applicable to each subsequent section thereof.

## CHAPTER VII.

### COLLECTION OF PROPERTY TAXES.

- SECTION 3746. Tax Collector to publish notice, specifying what.
3747. Taxes in San Francisco payable at Collector's office.
3748. In other counties notice to specify place of payment.
3749. Manner of publication of notice.
3750. Tax Collector to note date of payment.
3751. Receipt to be given.
3752. Taxes of decedents, how paid; duty of Probate Judge.
3753. Settlement of Collector with Auditor; when made; form of.
3754. Liability of Tax Collector refusing or neglecting to settle.
3755. Action against Collector for such refusal or neglect.
3756. When taxes are delinquent, addition thereto of five per cent.
3757. Certain times when taxes must not be received.
3758. Comparison of original and duplicate assessment books by Collector and Auditor.
3759. When delinquent list must be completed.
3760. All matters on assessment book, etc., to be set down in numerical or alphabetical order.

- SECTION 3761.** Credit to be given to Tax Collector on final settlement, etc.
3762. Tax Collector charged with delinquent taxes and five per cent additional.
3763. Auditor to transmit statement to Controller; time when; form of.
3764. Publication of delinquent list; when made, what to contain.
3765. Notice of sale appended to delinquent list.
3766. Manner of making publication.
3767. Same.
3768. Sale, when and where to take place.
3769. Notice containing what to be filed with County Recorder.
3770. Collector to collect an additional sum to defray costs, etc.; sum, how collected.
3771. Manner of conducting sale.
3772. Same.
3773. Owner of property may designate what portions to be sold first, etc.
3774. When purchaser does not make payment on next day property to be resold.
3775. Bid of person once refusing to make payment not to be received.
3776. Collector to give purchaser a duplicate certificate of sale.
3777. Certificates of sale, one to be given to purchaser, one filed with Recorder, and the other retained by Collector.
3778. Collector to enter in a book description of land sold, etc.
3779. Lien of State vests in purchaser; how divested.
3780. Redemption of property.
3781. Redemption, how made.
3782. Treasurer to report to Supervisors the names of persons entitled to redemption.
3783. Recorder to file certificate of sale.
3784. When property is redeemed, Recorder to note it in book.
3785. When property is not redeemed within twelve months, Collector to give deed to purchaser.
3786. Recitals in deed primary evidence of what.
3787. What recitals are conclusive evidence.
3788. Deed conveys absolute title. Exception.
3789. Assessment book, duplicate assessment book, delinquent lists, etc., primary evidence of what.
3790. Seizure and sale of personal property for taxes.
3791. Manner of conducting sale, etc.
3792. Same.

- SECTION 3793. Collector's charges for conducting sale and for seizure.
- 3794. Title to such property vests in purchaser on payment, etc.
  - 3795. Excess of proceeds over taxes and costs returned to owner, etc.
  - 3796. Unsold portion to be left at place of sale at risk of owner.
  - 3797. Final settlement of Collector with Auditor.
  - 3798. Same.
  - 3799. Same.
  - 3800. Collector to make certain affidavit.
  - 3801. Auditor to file statement of unpaid taxes with Supervisors. Cancellation of taxes.
  - 3802. Unpaid taxes not canceled to be entered on assessment book of each succeeding year.
  - 3803. Rate of interest on delinquent taxes.
  - 3804. Taxes, etc., illegally collected to be refunded.
  - 3805. When land assessed more than once.
  - 3806. Land irregularly assessed, etc., not to be sold.
  - 3807. What mistakes do not affect sale of property for taxes.
  - 3808. Collection of taxes from persons assessed, but removed to another county.
  - 3809. Same.
  - 3810. Expenses of such proceeding, how paid.

Tax  
Collector to  
publish  
notice,  
specifying  
what.

3746. Within ten days after the receipt of the "duplicate assessment book," the Tax Collector must publish a notice specifying:

1. That taxes will become delinquent on the first Monday in January next thereafter, and that unless paid prior thereto, five per cent will be added to the amount thereof;

2. The time and place at which payment of taxes may be made.

NOTE.—A Tax Collector duly elected may not be deprived of any part of his duties by the Legislature, so as to confer them upon one not selected by vote as a Tax Collector, but may provide for the election of such an officer.—Mills vs. Sargeant, 36 Cal., p. 379.

Taxes in  
San  
Francisco  
payable at  
Collector's  
office.

3747. In the City and County of San Francisco the notice must specify the office of the Collector as the place where taxes may be paid.

3748. In other counties the notice must specify a time and place within each township in the county when and where the Collector will attend to receive payment of taxes.

In other counties notice to specify place of payment.

3749. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township.

Manner of publication of notice.

NOTE.—Want of publication does not vitiate tax.—*Moore vs. Patch*, 12 Cal., p. 265. See Sec. 3764, post; “Delinquent.”

-3750. The Tax Collector must mark the date of the payment of any tax in the assessment book, opposite the name of the person paying.

Tax Collector to note date of payment.

NOTE.—Taxes collected on property in dispute, see *Robinson vs. Gaar*, 6 Cal., p. 273. Collection cannot be enjoined, when.—*Merrell vs. Gorham*, 6 Cal., p. 41; *Fremont vs. Early*, 11 Cal., p. 361. Delinquent.—*Fremont vs. Bolling*, 11 Cal., p. 380. The obligation to pay a tax does not depend on the law so much as it is a duty to the Government, which may be enforced by law; the law only provides a method of enforcing the duty.—*People vs. Seymour*, 16 Cal., p. 332.

3751. He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

Receipt to be given.

3752. The Probate Judge must require every administrator and executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

Taxes of decedents, how paid.

Duty of Probate Judge.

NOTE.—Stats. 1861, Sec. 16.

3753. On the first Monday in each month the Tax Collector must settle with the Auditor for all moneys collected for the State or county, and pay the same to

Settlement of Collector with Auditor; when made.

the County Treasurer, and on the same day must deliver to and file in the office of the Auditor a statement, under oath, showing:

Form of.

1. An account of all his transactions and receipts since his last settlement;
2. That all money collected by him as Tax Collector has been paid.

NOTE.—See Sec. 176, and Secs. 424, 425, 426, et al., Title XII, Part I, Penal Code Cal.

Liability of Tax Collector refusing or neglecting to settle.

3754. A Tax Collector refusing or neglecting for a period of five days to make the payments and settlements required in this Title, is liable for the full amount of taxes charged upon the assessment roll.

NOTE.—Sec. 176, Penal Code Cal., applicable to Secs. 3750, 3751, 3752, 3754. See note at end of this Title for penal provisions other than here enumerated.

Action against Collector for such refusal or neglect.

3755. The District Attorney must bring suit against the Tax Collector and his sureties for such amount, and in case of neglect, the Controller of State or the Board of Supervisors may require him to do so; and when the suit is commenced, no credit or allowance must be made to the Collector for the taxes outstanding.

When taxes are delinquent, addition thereto of five per cent.

3756. On the first Monday in January of each year all unpaid taxes are delinquent, and thereafter the Tax Collector must collect thereon for the use of the county an addition of five per cent.

NOTE.—This addition of a percentage for delinquency is constitutional.—High vs. Shoemaker, 22 Cal., p. 363. How collected and with costs.—People vs. Todd, 23 Cal., p. 181.

Certain times when taxes must not be received.

3757. No taxes must be collected or received from the first to the third Monday of January, inclusive, in each year.

3758. On the third Monday in January of each year the Tax Collector must attend at the office of the



Auditor, with the duplicate assessment book, and carefully compare the duplicate with the original assessment book, and every item marked "Paid" in the former must be marked "Paid" in the latter.

Comparison of original and duplicate assessment books by Collector and Auditor.

3759. The Tax Collector must, at the time specified in the preceding section, deliver to the Auditor a complete "delinquent list" of all persons and property then owing taxes.

When delinquent list must be completed.

3760. In the list so delivered must be set down in numerical or alphabetical order all matters and things contained in the assessment book and relating to delinquent persons or property.

All matters on assessment book, etc., to be set down in numerical or alphabetical order.

3761. The Auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the Tax Collector who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him the Treasurer's receipt, or if the Treasurer is the Collector, require from him an immediate account for any existing deficiency.

Credit to be given to Tax Collector on final settlement, etc.

NOTE.—Hittell, ¶ 6183; Shaw's Rev. Act, Sec. 164. Moneys heretofore collected from tax on debts secured by mortgage, or now delinquent and to be collected, must be paid to County Treasurer for benefit of the County General Fund.—See Stats. 1871-2, p. 762.

*An Act in relation to moneys belonging to the State derived from taxes assessed on mortgages.*

[Approved March 30, 1872.]

[Enacting clause.]

SECTION 1. All moneys belonging to the State now in the hands of Tax Collectors, which were received as taxes on promissory notes secured by mortgage assessed and collected in the years 1870 and 1871, and all moneys that may be derived from taxes now delinquent,

which were assessed on promissory notes secured by mortgage in the years 1870 and 1871, are hereby directed to be retained for the use of the several counties which levied such taxes. The Tax Collectors of the several counties in which such property was assessed are authorized and required to pay over all such moneys to the County Treasurer in the same manner as other taxes are paid.

SEC. 2. All moneys which by this Act are remitted to the several counties in which such assessments were made shall be placed to the credit of the General Fund.

SEC. 3. All laws and parts of laws inconsistent with this Act are hereby repealed.

SEC. 4. This Act shall be in force from and after its passage.

Tax Collector charged with delinquent taxes and five per cent additional.

3762. After settlement with the Tax Collector, as prescribed in the preceding section, the Auditor must charge the Tax Collector then acting with the amount of taxes due on the delinquent tax list, with the five per cent added thereto, and within three days thereafter deliver the list, duly certified, to such Tax Collector.

Auditor to transmit statement to Controller; time when; form of.

3763. Within ten days after the final settlement, the Auditor must transmit, by mail or express, a statement to the Controller of State, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

Publication of delinquent list; when made, what to contain.

3764. On or before the first Monday in February the Tax Collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes and costs due, opposite each name and description, with the taxes due on personal property added to taxes on real estate, where the estate is liable therefor or the several taxes are due from the same person.

NOTE.—See *Moore vs. Patch*, 12 Cal., p. 265, as to omissions and their effect—held not to release the property. See, also, *O'Grady vs. Barnheisel*, 23 Cal., p. 287.

**3765.** The Tax Collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction.

Notice of sale appended to delinquent list.

NOTE.—The certificate of sale is filed at expense of the purchaser.—O'Grady vs. Barnheisel, 23 Cal., p. 297.

**3766.** The publication must be made once a week for three successive weeks, in some newspaper, or supplement thereto, published in the county; or if there is none, then by posting a copy of the list in three public places in each township.

Manner of making publication

**3767.** The publication must designate the time and place of sale.

Same.

**3768.** The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the County Court House, or if in the City and County of San Francisco, in or in front of the Tax Collector's office.

Sale, when and where to take place.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1, 1872, cited in note to Sec. 18, ante. A sale for illegally levied tax is void.—See Hardenburg vs. Kidd, 10 Cal., p. 402; Bucknall vs. Story, 36 Cal., p. 67. One in possession, who by his laches permits the property to be sold for taxes and buys it in at the tax sale acquires no rights against the owner; the one in possession must pay the taxes if the owner does not.—Kelsev vs. Abbott, 13 Cal, p. 609; see, also, Russell vs. Mann, 22 Cal., p. 131; Roberts vs. Chan Tin Pen, 23 Cal., p. 259; Moss vs. Shear, 26 Cal., p. 38; and Coppinger vs. Rice, 33 Cal., p. 408, as to purchaser; see, also, Bernal vs. Lynch, 36 Cal., p. 135; Barrett vs. Amerien, 36 Cal., p. 322.

**3769.** The Collector, as soon as he has made the publication required by Sections 3764, 3765, 3766, and 3767, must file with the County Recorder and County Clerk respectively, a copy of the publication, with an

Notice containing what to be filed with County Recorder.

affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereto, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places in each of the townships, designating the township and places therein, which affidavit is primary evidence of all the facts stated therein.

NOTE.—See note to Sec. 3768, ante.

Collector to collect an additional sum to defray costs, etc. Sum. how collected.

3770. The Collector must collect, in addition to the taxes due on the delinquent list and five per centum added thereto, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, one half of which must go to the county and the other to the Collector in full for preparing the list.

NOTE.—See note to Sec. 3756, ante.

Manner of conducting sale.

3771. On the day fixed for the sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the Collector, between the hours of ten o'clock A. M. and three P. M., must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically or in the numerical order of lots and blocks until completed.

NOTE.—See note to Sec. 3768, ante.

Same.

3772. He may postpone the day of commencing the sale, or the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

NOTE.—Stats. 1857, p. 332, Sec. 16.

Owner of property may designate what portions to be sold first, etc.

3773. The owner or person in possession of any real estate offered for sale for taxes due thereon may designate in writing to the Tax Collector, prior to the sale, what portion of the property he wishes sold, if

less than the whole; but if the owner or possessor does not, then the Collector may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes and costs due, including two dollars to the Collector for the duplicate certificate of sale, is the purchaser.

*Handwritten:*  
 May 10  
 2010  
 11:14

NOTE.—See Gillis vs. Barnett, 28 Cal., p. 393. Sale will not be set aside for its irregularity, if the tax is correctly levied.—Hib. Sav. and Loan Society vs. Ordway, 38 Cal., p. 679.

3774. If the purchaser does not pay the taxes and costs before ten o'clock A. M. of the following day, the property, on the next sale day, before the regular sale, must be resold for the taxes and costs.

When purchaser does not make payment on next day property to be resold.

3775. The bid of any person refusing to make the payment for property purchased by him must not be received on the sale of any property advertised in the delinquent list of that year.

Bid of person once refusing to make payment not to be received

3776. After receiving the amount of the taxes and costs, the Collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

Collector to give purchaser a duplicate certificate of sale.

3777. The certificates must be signed by the Collector, and one copy delivered to the purchaser, and the other filed in the office of the County Recorder.

Certificates of sale, one to be given to purchaser, one filed with Recorder, and the other retained by Collector.

NOTE.—This filing is at the cost of the purchaser.—O'Grady vs. Barnheisel, 23 Cal., p. 297.

3778. The Collector, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and amount

Collector to enter in a book description of land sold, etc.

paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection without fee, during office hours, when not in actual use.

Lien of State vests in purchaser; how divested.

3779. On filing the certificate with the County Recorder the lien of the State vests in the purchaser, and is only divested by the payment to him, or to the County Treasurer for his use, of the purchase money and fifty per cent thereon.

Redemption of property.

3780. A redemption of the property sold may be made by the owner or any party in interest within twelve months from the date of the purchase.

NOTE.—Though made under former statutes reference is here given to the following decisions, which may be consulted with reference to this section profitably. Seale vs. Doane, 17 Cal., p. 476; People vs. McEwen, 23 Cal., p. 54; Mayo vs. Marshall, 23 Cal., p. 594; Mayo vs. Wood, 31 Cal., p. 200; Hib. Sav. and L. Soc. vs. Ordway, 38 Cal., p. 679.

Redemption, how made.

3781. Redemption must be made in gold or silver coin, and when made to the County Treasurer he must credit the amount paid to the person named in the Collector's certificate, and pay it on demand to the person or his assignees, reserving two and a half per cent for his fees therefor.

Treasurer to report to Supervisors the names of persons entitled to redemption.

3782. In each report the Treasurer makes to the Supervisors he must name the persons entitled to redemption money, and the amount due to each.

Recorder to file certificate of sale.

3783. On receiving the certificate of sale the Recorder must file it, and make an entry in a book similar to that required of the Collector.

When property is redeemed. Recorder to note it in book.

3784. On the presentation of the receipt of the person named in the certificate, or of the County Treasurer for his use, of the total amount of redemption money, the Recorder must mark the word "Re-

deemed," the date, and by whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

3785. If property is not redeemed within twelve months from the sale the Collector must make to the purchaser or his assignee a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption.

When property is not redeemed within twelve months, Collector to give deed to purchaser.

NOTE.—No title passes to purchaser by a tax sale for taxes for which he is the delinquent.—Garwood vs. Hastings, 38 Cal., p. 217. If, in a sale for taxes, the person becoming the purchaser is in collusion to perpetrate a fraud, the sale passes no title.—Hib. Sav. and Loan Soc. vs. Ordway, 38 Cal., p. 679.

3786. The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is primary evidence that:

Recitals in deed primary evidence of what.

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

3787. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the Assessor, inclusive, up to the execution of the deed.

What recitals are conclusive evidence.

Deeds convey absolute title.

**3788.** The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except when the land is owned by the United States or this State, in which case it is primary evidence of the right of possession.

Exception.

Assessment book, duplicate assessment book, delinquent lists, etc., primary evidence of what.

**3789.** The assessment book, duplicate assessment book, or delinquent list, or a copy thereof certified by the County Auditor, showing unpaid taxes against any person or property, is primary evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

NOTE.—Hittell, ¶ 6192; Shaw's Rev. Act, Sec. 159.

Seizure and sale of personal property for taxes.

**3790.** The Tax Collector may, after the first Monday in February in each year, collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent.

Manner of conducting sale, etc.

**3791.** The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage, and costs.

Same.

**3792.** The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

Collector's charges for conducting sale and for seizure.

**3793.** For seizing or selling personal property, the Tax Collector may charge in each case the sum of three dollars, and the same mileage as is allowed by law to the Sheriff of the county.

Title to such personal property is purchased on payment of the

**3794.** On payment of the price bid for any property sold, the delivery thereof with a bill of sale, vests the title thereto in the purchaser.



3795. All excess over the taxes, per cent, and costs of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the County Treasury, subject to the order of the owner, heirs, or assigns.

Excess of proceeds over taxes and costs returned to owner, etc.

3796. The unsold portion of any property may be left at the place of sale at the risk of the owner.

Unsold portion to be left at place of sale at risk of owner.

3797. The Tax Collector must, annually, on the third Monday of March, attend at the office of the Auditor with the delinquent list, and the Auditor must then carefully compare the list with the assessments of persons and property not marked "Paid" on the assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book.

Final settlement of Collector with Auditor.

3798. The Auditor must then administer to the Tax Collector an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment.

Same.

3799. The Auditor must then foot up the amount of taxes remaining unpaid, and credit the Tax Collector with the amount, and have a final settlement with him; and the delinquent list must remain on file in the Auditor's office.

Same.

3800. At the time mentioned in Section 3797, the Collector must make an affidavit, indorsed on the list, that the taxes not marked "Paid" have not been paid, and that he has not been able to discover any property belonging to, or in possession of, the persons liable to pay the same whereof to collect them.

Collector to make certain affidavit.

3801. A statement of the amount of unpaid taxes must be filed by the Auditor with the Clerk of the

Auditor to file statement of unpaid taxes with Supervisors.

Cancellation of taxes.

Board of Supervisors, and the Board may cancel all taxes which in its opinion cannot be collected, and return the statement to the Auditor.

Unpaid taxes not canceled to be entered on assessment book of each succeeding year.

3802. All taxes not canceled must be entered by the Auditor on the assessment book of each succeeding year, until paid.

Rate of interest on delinquent taxes.

3803. Interest at the rate of two per cent per month must be collected on such delinquent taxes from the time they were first delinquent until paid.

Taxes, etc., illegally collected to be refunded.

3804. Any taxes, per centum, and costs erroneously or illegally collected, may by the order of the Board of Supervisors, be refunded by the County Treasurer.

When land assessed more than once.

3805. When the Collector discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due, and make return of the facts under affidavit to the County Auditor.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1st, 1872, cited in note to Sec. 18, ante. Taxing the money secured by mortgage, and the property upon which it is secured, is not double taxation of the mortgagee's property.—*People vs. Whartenby*, 38 Cal., p. 461. A tax upon land and a levy of tax on the purchase money of the same land secured by mortgage both for the same year, is double taxation.—See *People vs. Kohl*, 40 Cal., p. 127.

Land irregularly assessed, etc., not to be sold.

3806. If the Collector discovers before the sale that on account of irregular assessment, or of any other error, any land ought not to be sold, he must not offer the same for sale; and the Board of Supervisors must cause the Assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

What mistakes do not affect sale of property for taxes.

3807. When land is sold for taxes correctly imposed as the property of a particular person, no mis-

nomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

3808. If any person removes from one county to another, after being assessed on personal property, the Collector of the county in which he was assessed may employ an attorney to sue for and collect the same in the Assessor's name.

Collection of taxes from persons assessed, but removed to another county.

NOTE.—See as to pleadings in tax suits, *People vs. Nelson*, 36 Cal., p. 375. On the subject of tax suits generally, *Eitel vs. Foth*, 39 Cal., p. 439; *People vs. Fox*, 39 Cal., p. 621.

3809. On the trial a certified copy of the assessment, signed by the Auditor of the county where the same was made, with the affidavit of the Collector thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is primary evidence that such tax and the per centum is due, and entitles him to judgment, unless the defendant proves that the tax was paid.

Same.

3810. The Treasurer and Auditor must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do not exceed one third of the amount of the tax collected.

Expenses of such proceeding, how paid.

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## CHAPTER VIII.

### COLLECTION OF TAXES BY THE ASSESSOR ON CERTAIN PERSONAL PROPERTY.

SECTION 3820. When taxes on movable personal property must be collected by the Assessor.

3821. Assessor may collect such taxes by seizure and sale.

3822. Mode of conducting such seizure and sale.

3823. Amount of taxes to be collected on movable personal property, how determined.

SECTION 3824. When excess of rate has been charged, such excess to be returned.

3825. When less than the rate has been charged, additional amount to be collected.

3826. Monthly settlement of Assessor with Auditor.

3827. Auditor to note in assessment book the amount of taxes which have been paid.

3828. Auditor to note excesses or deficiencies in taxes paid.

3829. Compensation of Assessor in collecting delinquent taxes.

3830. Present incumbents to collect.

When taxes on movable personal property must be collected by the Assessor.

3820. The Assessor must collect the taxes on movable personal property when such taxes are not a lien upon real property.

NOTE.—Property in transit, or temporarily in a county, is not to be taxed there, but where the owner is domiciled.—People vs. Niles, 35 Cal., p. 282. When a tax payer has no realty, the tax on his personal property has nothing on which to operate as a lien.

Assessor may collect such taxes by seizure and sale.

3821. In the case provided for in the preceding section at the time of making the assessment, or at any time before the first Monday of July, the Assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed.

Mode of conducting such seizure and sale.

3822. The provisions of Sections 3791, 3792, 3793, 3794, 3795, and 3796 apply to such seizure and sale.

Amount of taxes to be collected on movable personal property, how determined.

3823. The Assessor is governed, as to the amount of taxes to be by him collected on movable personal property, by the State and county rate of the previous year.

When excess of rate has been charged, such excess to be returned.

3824. When the rate is fixed for the year in which such collection is made, then if a sum in excess of the rate has been collected, the excess must be repaid to the person from whom the collection was made, or to his assignee.

**3825.** If a sum less than the rate fixed has been collected, the deficiency must be collected as other taxes on personal property are collected.

When less than the rate has been charged, etc.

**3826.** The Assessor, on the first Monday of each month, must make a settlement with the Auditor, and must pay into the County Treasury all moneys collected by him for such taxes during the preceding month, less the compensation allowed him for making such collection.

Monthly settlement of Assessor with Auditor.

**3827.** The Auditor must, as soon as the "assessment book" for the year comes into his hands, note opposite the names of each person from whom taxes have been collected the amount thereof.

Auditor to note in assessment book the amount of taxes which have been paid.

**3828.** As soon as the rate of taxation for the year is fixed, the Auditor must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency.

Auditor to note excesses or deficiencies in taxes paid.

**3829.** For services rendered in the collection of delinquent taxes the Assessor must receive the same compensation as is allowed by law to the Tax Collector for similar services.

Compensation of Assessor in collecting delinquent taxes.

**3830.** In every county in this State where any officer other than the Assessor is charged with the collection of taxes upon personal property not a lien upon real property, such officer must, until after the expiration of the term of the present incumbent, discharge the duties cast upon the Assessor under the provisions of this Chapter.

Present incumbents to collect.

NOTE.—This section was added by Act of March 27, 1872; Stats. 1872, p. 586.

## CHAPTER IX.

## POLL TAXES.

- SECTION 3839.** Persons liable to poll tax.
3840. Poll taxes collected by Assessor, when.
3841. County Treasurer to have blank poll tax receipts printed.
3842. Style of blank to be changed each year.
3843. County Treasurer's duties in relation to poll tax blanks and receipts.
3844. Auditor to sign blank receipts, and make entry of number signed.
3845. Blanks to be delivered to Assessor.
3846. Poll tax may be collected by seizure and sale of personal property.
3847. Mode of conducting such seizure and sale.
3848. Debtors of persons owing poll tax to pay poll tax for such persons.
3849. Who are debtors under the preceding section.
3850. Debtor may charge his creditor for such poll tax paid.
3851. Receipt for poll tax delivered to purchaser of property sold for such tax.
3852. Receipt only evidence of payment.
3853. Monthly settlement of Assessor with Auditor for poll taxes.
3854. Assessor's yearly final settlement with Auditor for poll taxes.
3855. Auditor to return receipts not used to the Treasurer.
3856. Treasurer to credit Auditor with such receipts.
3857. Assessor to keep a roll of persons liable for poll tax.
3858. Such roll to be returned to Auditor.
3859. Assessor to note on assessment roll persons refusing to pay poll tax.
3860. Poll tax to be a lien on property, when.
3861. Proceeds of poll tax, to what Funds paid.
3862. Compensation allowed to Assessor for collecting such tax.

Persons  
liable to  
poll tax.

3839. Every male inhabitant of this State, over twenty-one and under sixty years of age (not exempt by law), must pay a poll tax of two dollars.

Poll taxes  
collected  
by  
Assessor,  
when.

3840. Poll taxes must be collected by the Assessor between the second Monday in January and the second Monday of October in each year.

3841. The County Treasurer must, before the second Monday in January of each year, cause to be printed of blank poll tax receipts a number sufficient for the use of the Assessor.

County Treasurer to have blank poll tax receipts printed.

3842. The style of such blanks must be changed every year.

Style of blank to be changed each year.

3843. The Treasurer must, before the second Monday in January of each year:

County Treasurer's duties in relation to poll tax blanks and receipts.

1. Number and sign such blanks;
2. Make an entry of the whole number thereof, and of the first and last number placed thereon, in a book by him to be kept for that purpose;
3. Deliver all such blanks to the Auditor and charge him therewith.

3844. The Auditor upon the receipt thereof must sign the same, and make in a book to be kept by him for that purpose a similar entry to that prescribed in Subdivision 2 of the preceding section.

Auditor to sign blank receipts, and make entry of number signed.

3845. He must at any time after the second Monday in January, upon demand, deliver such blanks to the County Assessor and charge him therewith.

Blanks to be delivered to Assessor.

3846. The Assessor may collect the poll tax from any person liable therefor by seizure and sale of any personal property owned by such person.

Poll tax may be collected by seizure and sale of personal property.

3847. The provisions of Sections 3791, 3792, 3793, 3794, 3795, and 3796, apply to such seizure and sale.

Mode of conducting such seizure and sale.

3848. Every person indebted to one who neglects or refuses, after demand, to pay a poll tax, becomes liable therefor, and must pay the same for such other person after service upon him by the Collector of a notice in writing, stating the name of such person.

Debtors of persons owing poll tax to pay poll tax for such persons.

3849. Every officer authorized to draw the warrants for or to pay the salary or fees of any officer is

Who are debtors under the preceding section.

the debtor of such officer within the meaning of the preceding section.

Debtor  
may charge  
his creditor  
for such  
poll tax  
paid.

3850. Every person paying the poll tax of another may deduct the same from any indebtedness to such other person.

Receipt for  
poll tax  
delivered to  
purchaser  
of property  
sold for  
such tax.

3851. The Assessor must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

Receipt  
only  
evidence of  
payment.

3852. The receipt so delivered is the only evidence of payment.

Monthly  
settlement  
of Assessor  
with  
Auditor for  
poll taxes.

3853. On the first Monday in each month the Assessor must make oath, before the Auditor, of the total amount of poll taxes collected by him during the last preceding month, and must, at the same time, settle with the Auditor for the same, and pay into the County Treasurer's office the total amount of poll taxes collected, less the per centum allowed for fees.

NOTE.—See Secs. 425, 426, Penal Code Cal.

Assessor's  
yearly final  
settlement  
with  
Auditor for  
poll taxes.

3854. On the second Monday in October the Assessor must return to the Auditor all poll tax receipts received by him and not used, and make final settlement with the Auditor therefor, and pay to the Treasurer the total amount collected and not before paid in, less the amount of his fees.

Auditor  
to return  
receipts not  
used to the  
Treasurer.

3855. The Auditor must, as soon as the settlement is made, return to the Treasurer the receipts not used.

Treasurer  
to credit  
Auditor  
with such  
receipts.

3856. The Treasurer must credit the Auditor with the receipts so returned, and must thereupon seal them up securely and deposit and keep them in his office.



3857. The Assessor must keep a roll of the names of all persons subject to or liable for poll tax, and the date and amount of each payment.

Assessor to keep a roll of persons liable for poll tax.

3858. On the second Monday in October in each year the officer must return to the Auditor the roll so made up.

Such roll to be returned to Auditor.

3859. If any person assessed for a property tax has not paid to the Assessor the poll tax due from him or for which he is liable, the Auditor must note the fact upon the assessment roll before he delivers it to the Collector.

Assessor to note on assessment roll persons refusing to pay poll tax.

3860. The amount of the poll tax, with fifty per cent in addition thereto, constitutes from the second Monday in October a lien upon the property assessed to such person, and must be collected in the same manner and at the same time as taxes upon his property are collected.

Poll tax to be a lien on property when.

3861. The proceeds of the poll tax must be paid into the School Fund of the county.

Proceeds of poll tax, to what Funds paid.

3862. The Assessor, for services rendered in the collection of poll taxes, must receive the same compensation as is allowed by law to Tax Collectors or Assessors for similar purposes.

Compensation allowed to Assessor for collecting such tax.

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## CHAPTER X.

### SETTLEMENTS WITH THE CONTROLLER AND PAYMENTS INTO THE STATE TREASURY.

SECTION 3865. County Treasurers to settle with Controller upon his order.

3866. Time when certain Treasurers shall make settlements.

3867. Treasurers neglecting to settle; penalty.

3868. Settlement of County Auditors with Controller.

- SECTION 3869.** Auditor to transmit report to Controller by mail.
3870. Failure of Auditor to make report; penalty.
3871. Controller to deduct fees and mileage, etc., on settlement.
3872. Manner of making payments into State Treasury.
3873. Controller's statement to contain what.
3874. County Treasurer to file Controller's statement with Auditor.
3875. Auditor to make certain entries.
3876. Rate of mileage allowed Treasurer.
3877. Controller may examine books of any revenue officer.
3878. When revenue officer has been guilty of defrauding, etc., District Attorney to prosecute.
3879. Controller may designate county in which such action shall be tried.
3880. Other counsel may be employed; expenses, how paid.

County  
Treasurers  
to settle  
with Con-  
troller upon  
his order.

3865. The Treasurers of the respective counties must at any time, upon the order of the Controller and Treasurer of State, settle with the Controller, and pay over to the Treasurer all moneys in their possession belonging to the State.

NOTE.—Stats. 1870, p. 423.

Time when  
certain  
Treasurers  
shall make  
settlements

3866. The Treasurers of the Counties of Amador, Alameda, Contra Costa, Calaveras, El Dorado, Nevada, Placer, Sierra, Solano, Yolo, San Francisco, Sacramento, San Joaquin, Santa Clara, Tuolumne, and Yuba, respectively, must, between the fifteenth and thirtieth days of January, April, July, and October of each year, and the County Treasurers of the Counties of Humboldt, Klamath, and Del Norte must, between the fifteenth and thirtieth days of October and April in each year, and the County Treasurers of other counties of this State must, between the fifteenth and thirtieth days of January and July, respectively, in each year, proceed to the State Capital and settle in full with the Controller of State, and pay over in cash to the Treasurer of State all funds which have come into their hands as County Treasurers before the close of business at the end of the previous month.

NOTE.—Stats. 1870, p. 423.

3867. Every County Treasurer who neglects or refuses to appear at the office of the Controller and Treasurer at the times specified in this Chapter, and then and there to settle and make payment as required by this Chapter, forfeits all fees, percentage, and mileage which would have otherwise been due him on such settlement; and the Controller is required to withhold all such fees, percentage, and mileage, and require the same to be paid into the Treasury for the use and benefit of the State.

Treasurers neglecting to settle; penalty.

NOTE.—Stats. 1870, p. 423.

3868. The Auditor of each county, between the first and fifteenth day of each month in which the Treasurer of his county is required to settle with the Controller, must make in duplicate and verify by his affidavit a report to the Controller of State, showing specifically the amount due the State from each particular source of revenue at the close of business on the last day of the preceding month.

Settlement of County Auditors with Controller.

3869. The Auditor must at once transmit by mail or express to the Controller one copy of the report, and must deliver the other copy to the Treasurer of his county.

Auditor to transmit report to Controller by mail.

3870. Every Auditor who fails to make and transmit the report required by this Chapter, or any report or statement required by this Title, forfeits all compensation which would be otherwise due him from the State; and the Controller is required to withhold such compensation.

Failure of Auditor to make report; penalty.

3871. In the settlement the Controller must deduct the commissions and mileage allowed to the County Treasurer for his services, the State's portion of the repayments made under Section 3824, and any other amount due the county or the officers thereof.

Controller to deduct fees and mileage, etc., on settlement.

NOTE.—Stats. 1870, p. 423.

Manner of making payments into State Treasury.

3872. The manner of making payments into the State Treasury is prescribed by Sections 433, 434, 452, and 453 of this Code.

Controller's statement to contain what.

3873. The Controller must, after the Treasurer has made settlement and payment, enter upon each copy of the Auditor's report a statement showing:

1. The amount of money by the County Treasurer paid into the State Treasury;
2. The amount deducted for commissions and other allowances;

—And must then return one copy of the report to the County Treasurer.

NOTE.—Stats. 1870, p. 423.

County Treasurer to file Controller's statement with Auditor.

3874. The County Treasurer must file with the Auditor of his county the copy returned to him by the Controller.

Auditor to make certain entries.

3875. The Auditor must then make the proper entries in his account with the Treasurer.

NOTE.—Stats. 1870, p. 423.

Rate of mileage allowed Treasurer.

3876. The Controller must, in the settlement, allow the Treasurer for mileage at the rate of forty cents per mile from the county seat to the Capital, such mileage not to exceed at any settlement one hundred dollars.

Controller may examine books of any revenue officer.

3877. The Controller may examine the books of any officer charged with the collection and receipt of State taxes.

When revenue officer has been guilty of defrauding, etc., District Attorney to prosecute.

3878. If he believes any officer has been guilty of defrauding the State of revenue, or has neglected or refused to perform any duty relating to the revenue, he must direct the District Attorney or other counsel to prosecute the delinquent.

3879. When any law in relation to the revenue of the State has been so far violated as to require the prosecution of the offender for a criminal offense, or proceedings against him by civil action, the Controller may designate the county in which the prosecution or proceeding may be had.

Controller may designate county in which such action shall be tried.

3880. The Controller or Attorney General may employ other counsel than the District Attorney, and the expenses must be audited by the Board of Examiners and be paid out of the State Treasury.

Other counsel may be employed; expenses, how paid.

## CHAPTER XI.

### MISCELLANEOUS PROVISIONS.

SECTION 3881. Omissions, errors, defects in form of assessment books, when may be corrected.

3882. Omissions, etc., in delinquent lists, how corrected.

3883. Publication of corrected delinquent lists, etc.

3884. Initial letters, abbreviations, and figures may be used in certain cases.

3885. No assessment illegal on account of informality, etc.

3886. Fines, forfeitures, penalties, etc., paid into County Treasury.

3887. Mortgaged or pledged personal property deemed property of person in possession.

3888. Taxes payable only in gold or silver coin; exception.

3889. Annual settlements of Assessors, District Attorneys, and Treasurers with Auditor.

3890. Officers to perform only the duties pertaining to their own offices.

3891. When this Title takes effect.

3892. Saving clause.

3893. Compensation of Assessor and Auditor for extra services.

3894. Deputies for Assessors.

3895. Compensation of Deputies.

3896. State Board may dispense with duplicate book.

Omissions, errors, defects in form of assessment books, when may be corrected.

3881. Omissions, errors, or defect in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with

the consent of the District Attorney, be supplied or corrected by the Assessor at any time within one year after the original assessment was made.

NOTE.—See *Norris vs. Russell*, 5 Cal., p. 249; *Ferris vs. Coover*, 10 Cal., p. 632; *Kelsey vs. Abbott*, 13 id., p. 609; *People vs. Holliday*, 25 id., p. 300; *People vs. S. F. Sav. Union*, 31 id., p. 132; *People vs. Mariposa Comp.*, 31 id., p. 196; *People vs. McEwen*, 23 id., p. 54. When legalized Courts may not go behind the legislative Acts.—*People vs. Todd*, 23 id., p. 181. Mistake immaterial.—*Bosworth vs. Danzien*, 25 Cal., p. 296; *Falkner vs. Hunt*, 16 Cal., p. 167. The difficulty in the case of *Hurlbutt vs. Butenop*, 27 Cal., p. 50, is obviated by this and succeeding sections.

Omissions, etc., in delinquent lists, how corrected.

3882. When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

Publication of corrected delinquent lists, etc.

3883. The publication must be made in the same manner as the original publication, and for not less than one week.

Initial letters, abbreviations, and figures may be used in certain cases.

3884. In the assessment of land, advertisement, and sale thereof for taxes, initial letters, abbreviations, and figures may be used to designate the township, range, section, or parts of section.

No assessment illegal on account of informality, etc.

3885. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

Fines, forfeitures, penalties, etc., paid into County Treasury.

3886. The fines, forfeitures, and penalties incurred by a violation of any of the provisions of this Title must be paid into the Treasury for the use of the county where the person against whom the recovery is had resides.

3887. Personal property, mortgaged or pledged, is deemed the property of the person in possession, and the mortgagor or lessor of real estate is liable for the taxes thereon.

Mortgaged or pledged personal property deemed property of person in possession.

3888. Taxes must be paid in legal coin of the United States. A tax levied for a special purpose may be paid in such funds as may be directed.

Taxes payable only in gold or silver coin. Exception.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1st, 1872, cited in note to Sec. 18, ante.

3889. Every Assessor, District Attorney, and County Treasurer must annually, on the first Monday of January, make a settlement with the County Auditor of all transactions connected with the revenue for the previous year.

Annual settlements of Assessors, District Attorneys, and Treasurers with Auditor.

3890. The Treasurer, Tax Collector, Assessor, Clerk of the Board of Supervisors, and each member of the Board must separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this Title.

Officers to perform only the duties pertaining to their own office

3891. With relation to the Acts passed at the present session of the Legislature, the provisions of this Title must, after this Title takes effect, be construed as though this Code had been passed and approved on the last day of the present session. But the provisions of this section do not apply to any Act expressly amendatory of either of the Codes, or putting into effect any part of either; nor to an Act approved March sixteenth, eighteen hundred and seventy-two, entitled an Act to put into immediate effect certain parts of the Political and Penal Codes; nor to an Act approved March twenty-second, eighteen hundred and seventy-two, entitled an Act to put into

When this Title takes effect.

to March 16th, 1872, have any effect whatever upon the Code, and they supplement its provisions when they are not repealed or superseded.

**TAX COLLECTOR.**—Alameda, duty concerning delinquent taxes, p. 38; El Dorado, election of, p. 377—this provides for the election of a Tax Collector, passed after the Code, and is now in operation; see Sec. 4106, post; Placer, relative to collection of personal property and poll tax, p. 656; duties of, p. 586.

**TAXES, COUNTY.**—Alameda, Alameda Township, to be levied in, p. 83; Alameda, delinquent in, p. 38; Alameda, squirrels and gophers, for destruction of, p. 432; Amador, county expenditures for, p. 172; Amador, special continued, p. 698; Butte, road, p. 322; Calaveras, bonded indebtedness, for redemption of, p. 719; Calaveras, road, p. 164; Colusa, road, p. 832; Colusa, special, Supervisors to levy, p. 98; Contra Costa, road, p. 788; El Dorado, County Current Expense Fund, special for, p. 793; El Dorado, road, additional, p. 376; El Dorado, road, property, and poll, p. 373; El Dorado, road, poll, and property, p. 704; Humboldt, road, p. 105; Humboldt, special, p. 541; Inyo, bridge, alternative tax to build, p. 330; Kern, General Fund, special for, p. 699; Kern, McFarland's Toll Road, special to purchase, p. 708; Klamath, boundary line, for survey of, p. 842; Klamath, road from Scott Valley to Sawyer's Bar, p. 552; Lassen, road, poll, and labor, p. 67; Los Angeles, bridge, pp. 211, 480; Marin, Court House and Jail, special for, p. 27; Mariposa, county purposes, additional, p. 30; Mendocino, county buildings, for, p. 25; Mendocino, road, p. 132; Mendocino, wagon road, p. 125; Merced, bridge across Merced River, p. 390; Merced, road, p. 714; Nevada, county road, p. 453; Nevada, road property, p. 456; Placer, road, property, and poll, p. 147; Plumas, county purposes, p. 322; Plumas, hospital, p. 321; Plumas, Red Clover bond interest, p. 770; Plumas, road, poll, and labor, p. 67; Sacramento, road poll, p. 702; Sacramento, Sacramento City and Swamp Land District Number Two, for protection of, p. 514; Sacramento, Sinking Fund, special for, p. 250; Sacramento, Swamp Land Districts Fifty and Fifty-four, special to bonds of, p. 884; San Bernardino, county buildings, for erection of, p. 103; San Diego, county purposes, p. 195; San Francisco, House of Correction, for payment of bonds to build, p. 879; San Francisco, Laguna survey, to pay indebtedness incurred in opening streets within limits of, p. 950; San Francisco, Montgomery Avenue, to pay indebtedness of, p. 181; San Francisco,



Montgomery Avenue bonds, for Sinking Fund, for payment of, p. 919; San Francisco, Montgomery street south, special to pay claims incurred in extending, p. 648; San Francisco, revenue interest, p. 774; San Francisco, school, p. 849; San Joaquin, road special, p. 627; San Joaquin, Swamp Land District Seventeen, special for, p. 906; San Luis Obispo and Santa Barbara, road, pp. 89, 134; San Mateo, road, p. 298; Santa Barbara, bonds of, to pay interest, p. 56; Santa Barbara, bonds of, for redemption, p. 57; Santa Barbara, San Buenaventura School District for, pp. 395, 396; Santa Barbara, Santa Barbara School District for, p. 124; Santa Clara, road, poll, and property, p. 518; Santa Cruz, assessment of 1871 and 1872 legalized, p. 17; Santa Cruz, county purposes, pp. 86, 87; Santa Cruz, squirrels and gophers, for destruction of, p. 92.—See Subd. 23, Sec. 4046, post. Siskiyou, road, from Scott Valley to Sawyer's Bar, p. 552; Siskiyou, school, p. 8; Solano, road, p. 4; Sonoma, road property, p. 497; Sonoma, road special, p. 505; Stanislaus, Court House and Jail, for payment of bonds to build, p. 42; Stanislaus, highway and ferry on San Joaquin River, p. 585; Sutter, Court House and Jail, to build, p. 320; Tehama, bridge, p. 535; Tehama, cemetery purposes, p. 872; Tehama, school, p. 130; Trinity, bridge, special for free, p. 414; Trinity, county additional, p. 415; Trinity, surveying purposes, p. 763; Tuolumne, redemption purposes for, p. 284; Tuolumne, Sonoma and Mono road bonds to pay, p. 320; Yolo, Plainfield School District, for, p. 699; Yuba, County Wagon Road and Bridge Interest Sinking Fund, p. 663; counties to receive moneys derived from taxing mortgages, p. 762.—See note to Sec. 3761, ante. In certain counties, for destruction of squirrels and gophers, pp. 474-532.—See Subd. 23, Sec. 4046, post. Yolo County, Supervisors to levy special, for county purposes, p. 270.

**TAXES, STATE.**—Insane Asylum, branch for, p. 680; licenses, to enforce collection of, p. 539; rate of taxation for twenty-fourth and twenty-fifth fiscal years, p. 687; requirements in sales of real property on execution for delinquent taxes, p. 399; State Capitol, for completion of, p. 695; State Normal School, for completion of, p. 672.



# PART IV.

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OF THE GOVERNMENT OF COUNTIES, CITIES, AND  
TOWNS.

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# PART IV.

## OF THE GOVERNMENT OF COUNTIES, CITIES, AND TOWNS.

### TITLE I. OF COUNTIES.

#### II. THE GOVERNMENT OF COUNTIES.

#### III. THE GOVERNMENT OF CITIES.

#### IV. LIABILITY OF COUNTIES AND CITIES FOR INJURIES TO PROPERTY BY MOBS OR RIOTS.

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## TITLE I.

### OF COUNTIES.

#### CHAPTER I. *County Boundaries and County Seats.*

#### II. *General Provisions relating to Counties.*

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## CHAPTER I.

### COUNTY BOUNDARIES AND COUNTY SEATS.

#### SECTION 3901. County defined.

3902. Number of counties in the State.

3903. Due courses defined.

3904. Other courses defined.

3905. To, on, along, and with mountain ridge.

3906. To, on, along, with, by, up, or down a creek, defined.

3907. In, to, or from ocean shore.

3908. Mouth of creek defined.

3909. Del Norte.

- SECTION 3910.** Klamath.  
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3912. Lassen.  
3913. Siskiyou.  
3914. Humboldt.  
3915. Tehama.  
3916. Colusa.  
3917. Lake.  
3918. Mendocino.  
3919. Trinity.  
3920. Plumas.  
3921. Sierra.  
3922. Butte.  
3923. Nevada.  
3924. Placer.  
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3926. Sutter.  
3927. El Dorado.  
3928. Sacramento.  
3929. Yolo.  
3930. Amador.  
3931. Alpine.  
3932. San Joaquin.  
3933. Stanislaus.  
3934. Merced.  
3935. Mono.  
3936. Calaveras.  
3937. Tuolumne.  
3938. Mariposa.  
3939. Fresno.  
3940. Tulare.  
3941. Kern.  
3942. Inyo.  
3943. San Bernardino.  
3944. San Diego.  
3945. Los Angeles.  
3946. Santa Barbara.  
3947. San Luis Obispo.  
3948. Monterey.  
3949. Santa Cruz.  
3950. San Francisco.  
3951. San Mateo.  
3952. Santa Clara.  
3953. Alameda.  
3954. Contra Costa.  
3955. Sonoma.  
3956. Solano.  
3957. Marin.  
3958. Napa.

**3901.** A county is the largest political division of the State having corporate powers. County defined.

NOTE.—See Const., Art. XI, Sec. 4.

**3902.** This State is divided into counties, named, bounded, and constituted as provided in this Title. Number of counties in the State.

**3903.** In describing courses the words “north,” “south,” “east,” and “west,” mean true courses, and refer to the true meridian unless otherwise declared. Due courses defined.

**3904.** The words “northerly,” “southerly,” “easterly,” and “westerly,” mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects. Other courses defined.

**3905.** The words “to,” “on,” “along,” “with,” or “by” a mountain or ridge, mean summit point, or summit line, unless otherwise expressed. To, on, along, and with mountain ridge.

**3906.** The words “to,” “by,” “along,” “with,” “in,” “up,” or “down” a creek, river, slough, strait, or bay, mean the middle of the main channel thereof, unless otherwise expressed. To, on, along, with, by, up, or down a creek, defined.

**3907.** The words “in,” “to,” or “from” the ocean shore mean a point three miles from shore. The words “along,” “with,” “by,” or “on” the ocean shore, mean on a line parallel with and three miles from the shore. In, to, or from ocean shore.

**3908.** The mouth of a creek, river, or slough which empties into another creek, river, or slough, is the point where the middle of the channels intersect. Mouth of creek defined.

#### DEL NORTE.

**3909.** Situated in the northwest corner of the State, beginning at a point in the Pacific Ocean on the forty-second parallel of north latitude, being south- Del Norte.

ern line of Oregon; thence southerly, by ocean shore, to a point one mile south of the mouth of the Klamath River, forming southwest corner; thence easterly, on a line parallel with Klamath River to a point one mile south of the mouth of Blue Creek; thence northeasterly to Siskiyou Mountains; thence easterly, following the ridge that divides the waters of Clear Creek from the waters of Dillon's Creek, to Klamath River, at a point equidistant from the mouths of said creeks; thence across Klamath River and east to the summit of Salmon Mountains, forming the southeast corner; thence northerly in a direct line to the head of the cañon on said river, about five miles above the mouth of Indian Creek; thence north, crossing Klamath River, to a point on the forty-second parallel of north latitude, forming northeast corner; thence west to the place of beginning.

County seat—Crescent City.

NOTE.—Stats. 1857, p. 35; 1858, p. 21.

#### KLAMATH.

Klamath

3910. Beginning at southwest corner of Del Norte, as established in Section 3909; thence southerly, by ocean shore, to a point west from the mouth of Mad River, forming southwest corner; thence east to a point in Trinity River, which forms common corner of Humboldt, Klamath, and Trinity; thence northeasterly to and along Scott's Mountain to its point of intersection with the ridge dividing the waters which flow into Scott's, Shasta, and Sacramento Rivers on the north from the waters which flow into Salmon and Klamath Rivers on the south, forming the common corner of Siskiyou, Klamath, and Trinity; thence northerly to and along the last mentioned ridge to the southeast corner of Del Norte, as established in Section 3909;



thence westerly along the southern line of Del Norte to the place of beginning.

County seat—Orleans Bar.

NOTE.—Stats. 1851, p. 180; 1855, p. 200; 1856, p. 32; 1857, p. 35.

## SHASTA.

**3911.** Beginning at the northern line of Tehama, Shasta.  
at the head of Bloody Island, in Sacramento River; thence to and down the eastern channel to the mouth of Battle Creek; thence easterly, up Battle Creek, by the main channel, to the mouth of the middle fork, known as Digger Creek; thence up Digger Creek to its head; thence east to a point south of Black Butte Mountain, forming southeast corner; thence north, on western line of Lassen, to a rock mound, forming northeast corner, on southern line of Siskiyou; thence west, on said southern line, to Castle Rock, forming northwest corner; thence southerly along Trinity Mountain to the head of Bee Gum Creek, forming southwest corner; thence easterly down Bee Gum, Middle Fork, and Cottonwood Creeks to the western channel of Sacramento River; thence, by direct line, to the point of beginning.

County seat—Shasta City.

NOTE.—Stats. 1851, p. 177; 1852, p. 228; 1852, p. 235; 1856, p. 118; 1857, p. 25; 1857, p. 109; 1859, p. 259; 1864, p. 264.

## LASSEN.

**3912.** Beginning at southwest corner, on the Lassen.  
northern line of Sierra, as established in Section 3921, at a point on the summit of the ridge which crosses said line, and which divides Long Valley from Sierra Valley; thence northwesterly, following said ridge, to a point due south from the Town of Susanville; thence westerly, along the ridge separating the waters which flow into the east branch of the north fork of Feather River, running through Indian Valley, from those

which flow into the north fork of Feather River, running through Mountain Meadows, to a point on said ridge south from the point where the old and present traveled road from the Big Meadows, via Hamilton's ranch, first crosses the said North Fork; thence north, to a point east of the southeast corner of Shasta; thence west, along said extension line, to a point due south of Black Butte Mountain, being southeast corner of Shasta; thence north, to a point on southern line of Siskiyou marked by a rock mound, being northwest corner of Lassen and northeast corner of Shasta; thence east, along said line, to the eastern boundary of the State; thence south, along said State line, to the northeast corner of Sierra, as established in Section 3921; thence west, along the line of Sierra, to the place of beginning.

County seat—Susanville.

NOTE.—Stats. 1864, p. 264; 1865, p. 453.

Stats. 1871-2, p. 886.

*An Act providing for the survey of the line forming a portion of the southern boundary of Siskiyou County and the northern boundary of Lassen County.*

[Approved April 1, 1872.]

[Enacting clause.]

SECTION 1. The Surveyor General is hereby directed to survey and locate that portion of the southern boundary line of the County of Siskiyou, commencing at a point known as the Devil's Castle, near and on the opposite side from Soda Springs, on the Upper Sacramento River, and running from said point due east, to the eastern boundary of the State of California, and shall plainly designate said line by suitable monuments, and describe the same upon the maps of State, in accordance with the several Acts of the Legislature of the State of California, defining the northern boundary of the County of Lassen and that portion of the southern boundary of the County of Siskiyou above described.

SEC. 2. The necessary expenses of such survey and location of said line shall be paid by the State of California, out of the General Fund thereof, to the Sur-

veyor General, upon his filing in the office of the State Controller, his certificate that such survey is completed according to law, together with his claim, setting forth the items of expense of such survey; *provided*, that the total expense of such survey shall not exceed the sum of twenty-five hundred dollars; and the sum of twenty-five hundred dollars is hereby appropriated for the payment of the expenses of such survey.

SEC. 3. This Act shall take effect from and after its passage.

## SISKIYOU.

3913. Beginning at southwest corner, being common corner of Trinity, Klamath, and Siskiyou, as established in Section 3910; thence easterly, on northern line of Trinity, to northwest corner of Shasta, as established in Section 3911; thence east, on northern line of Shasta and Lassen, to western line of the State of Nevada; thence north, on the line of said State, to the southern line of the State of Oregon; thence west, on Oregon line, to the northeast corner of Del Norte, as established in Section 3909; thence southeasterly, on the eastern lines of Del Norte and Klamath, as established in Sections 3909 and 3910, to the place of beginning.

County seat—Yreka.

NOTE.—Stats. 1852, p. 233; 1861, p. 373. The line between Oregon and California has been established by the United States Survey. See Act of 1871-2, relating to boundaries between Siskiyou and Lassen Counties, in note to Sec. 3912, ante.

## HUMBOLDT.

3914. Beginning at southwest corner of Klamath, as established in Section 3910; thence east, to common corner of Klamath, Humboldt, and Trinity, in Trinity River, as established by Section 3910; thence southeasterly, up Trinity River, to the mouth of its south fork; thence southeasterly, along the eastern side of said south fork, one hundred feet above high water mark, to the mouth of Grouse Creek; thence

south, to a point on the fortieth degree of north latitude, being on northern line of Mendocino, and forming southeast corner of Humboldt; thence west, on said line, to the Pacific Ocean; thence northerly, along the ocean shore, to the place of beginning.

County seat—Eureka.

NOTE.—Stats. 1853, p. 161; 1856, p. 37; 1862, p. 6.

#### TEHAMA.

**Tehama.** 3915. Beginning at the point of intersection of Sacramento River with south line of Township Twenty-three North, Mount Diablo base; thence west, on said line, being northern line of Colusa, to the summit of the Coast Range, being southwest corner; thence northerly, on said summit line, to the southwest corner of Shasta, as established in Section 3911; thence easterly, on the southern line of Shasta, as established in Section 3911, to the northwest corner of Plumas, being the point of intersection of southern line of Shasta with the summit line of the dividing ridge between the waters of Mill and Deer Creeks, tributaries of the Sacramento River, and Rice's and Warner's Creeks, tributaries of the north fork of Feather River, forming northeast corner of Tehama; thence southerly, along said summit line, to the north point of Butte County, it being the point where the northern road from Big Meadows to Butte Meadows, by Dye's house, crosses the said summit line; thence southwesterly, in a direct line, to the head of Rock Creek; thence southwesterly, down Rock Creek, to the south line of Township Twenty-four North, Mount Diablo base; thence west, on said line, to the Sacramento River; thence along said river to the place of beginning.

County seat—Red Bluff.

NOTE.—Stats. 1856, p. 118; 1856, p. 222; 1857, p. 25; 1857, p. 109; 1857, p. 134; 1859, p. 359. There seemed to be no data from which to fix the common corner of

Tehama and Butte on the eastern line of Plumas, except that derived from Warren Holt's map, of the year 1869.

## COLUSA.

**3916.** Beginning at southeast corner, being north-east corner of Yolo, in Sacramento River, at its intersection with the south line of Township Thirteen North, Mount Diablo base; thence west, on said township line to the ridge dividing the waters flowing into Bear Creek and Stony Creek, from those flowing west into the north fork of Cache Creek and Clear Lake; thence northerly, along said ridge to the summit line of the Coast Range, being the western line of Lake, forming southwest corner of Colusa and northwest corner of Yolo; thence northerly on said summit and western boundary of Lake, through Hull's Mountain, to the southwest corner of Tehama, as established in Section 3915; thence easterly on southern line of Tehama to initial point of Tehama, in Sacramento River, on south line of Township Twenty-three; thence down said river to the southwest corner of the Llano Seco Grant; thence northeasterly along said grant line to its intersection with the northern boundary of Township Nineteen North; thence east to Butte Creek; thence down Butte Creek to Butte Slough; thence up Butte Slough to Sacramento River; thence down Sacramento River to the place of beginning.

County seat—Colusa.

NOTE.—Stats. 1851, p. 179; 1853, p. 193; 1856, pp. 118, 124.

## LAKE.

**3917.** Beginning at the summit of Mount Hull, near Mount St. John, on the western line of Colusa, and forming the northeast corner of Lake and east corner of Mendocino; thence southerly and circuitously, by the summit line of the Mayacmas Range, being the dividing ridge between the waters flowing

into the Russian and Eel Rivers and those flowing easterly into Clear Lake, to the summit of Mount St. Helena; thence easterly along the line heretofore established to the Buttes Cañon road; thence easterly, in a right line, to the most northern point of the Berryessa Rancho; thence easterly along the northern line of said rancho to the northeast corner thereof; thence east to the western line of Yolo County, as established in Section 3929; thence northerly, on the western line of Yolo and Colusa Counties, to the place of beginning.

County seat—Lakeport.

NOTE.—Stats. 1861, p. 560; 1864, p. 97; 1864, p. 111; 1868, p. 269; 1870, p. 442.

Stats. 1871-2, p. 903.

*An Act to more clearly define the boundary line between the Counties of Lake and Yolo, in the State of California.*

[Approved April 1, 1872.]

[Enacting clause.]

SECTION 1. The line established by H. H. Sanford, as Deputy Surveyor General, under special instruction of J. W. Bost, Surveyor General of California, at the request of the Boards of Supervisors of the Counties of Lake and Yolo, and designated on a certain map on file in the office of the Surveyor General of the State of California, indorsed "Map of the boundary line between Lake and Yolo Counties, surveyed April, 1871, by H. H. Sanford, Deputy Surveyor General of California," is hereby declared the boundary line between the said Counties of Lake and Yolo, provided the same is in accordance with the provisions of an Act to more clearly define and establish the boundary line of Yolo County, approved March 3, 1866.

SEC. 2. This Act shall take effect from and after its passage.

#### MENDOCINO.

**Mendocino.** 3918. Beginning at the southwest corner of Humboldt, as established in Section 3914; thence southwesterly, by the ocean shore, to a point three miles west of Walhalla River; thence east to the mouth of

said stream, and up the channel two miles; thence easterly in a direct line, on northern line of Sonoma, to the most northern and highest peak of Redwood Mountain; thence east to the western boundary of Lake, on the summit of the Mayacmas ridge; thence northerly, along the western and northern boundary of Lake, as established in Section 3917, to the northeast corner thereof; thence northerly, along the western boundaries of Colusa and Tehama, as established in Sections 3915 and 3916, to a point on the line of the fortieth parallel of north latitude, forming the northeast corner of Mendocino and the southeast corner of Trinity; thence west along said parallel, on southern line of Humboldt and Trinity, to the place of beginning.

County seat—Ukiah City.

NOTE.—Stats. 1851, p. 178; 1859, p. 98; 1864, p. 334; 1864, p. 94.

#### TRINITY.

**3919.** Beginning at the northeast corner of Men- Trinity.  
 docino, as established in Section 3918, on the summit  
 line of the Coast Range; thence northerly on said range  
 and the western line of Tehama and Shasta, to the  
 point of intersection with the southern line of Siski-  
 you, being northeast corner of Trinity and northwest  
 corner of Shasta; thence westerly, on the ridge divid-  
 ing the waters flowing south and west into Trinity and  
 Salmon Rivers from the waters flowing north and east  
 into Scott's and Sacramento Rivers, to common corner  
 of Klamath, Siskiyou, and Trinity, as established in  
 Section 3910; thence southwesterly, on the line of  
 Scott's Mountain, being the southern line of Klamath,  
 to common corner of Trinity, Klamath, and Humboldt,  
 as established in Section 3909; thence southerly, by  
 the eastern line of Humboldt, to the fortieth parallel  
 of latitude, being the northern line of Mendocino,

forming southwest corner; thence east, to the place of beginning.

County seat—Weaverville.

NOTE.—Stats. 1851, p. 179; 1853, p. 161; 1855, p. 200.

PLUMAS.

**Plumas.** 3920. Beginning on dividing ridge between the waters of Yuba and Feather Rivers, at common corner of Yuba, Butte, and Plumas, established by survey and map of Joseph Johnston, County Surveyor of Yuba County, July, eighteen hundred and fifty-seven, and indicated by a large spruce tree standing in front of the Buckeye House, marked "Corner of Plumas, Butte, and Yuba;" thence northeasterly, by direct line to the northwest corner of Sierra and the south corner of Plumas, in Slate Creek, at a point where the third course or terminating north and south line of survey of Keddie and Church, made June nineteenth, eighteen hundred and sixty-six, crosses said creek; thence northeasterly, up said creek, to the intersection of the first north and south line of said survey; thence north, on said line, to the initial point thereof, being the summit line of the ridge dividing the waters of Feather River from the waters of the Yuba River; thence easterly, on said summit line, and east to "The Falls," about one mile below the outlet of Gold Lake; thence east, to the summit of the ridge which divides Long Valley from Sierra Valley, this point forming the most southern southwest corner of Lassen, as established in Section 3912, also the southeast corner of Plumas; thence northwesterly, on the southwestern irregular line of Lassen, as established in Section 3912, to the southeast corner of Shasta, as established in Section 3911; thence west on the southern line of Shasta, to the northeast corner of Tehama, as established in Section 3915; thence southerly, on the ridge, being eastern line of Tehama and Butte, to the point of inter-



section of a line running northwesterly from the initial point, at the Buckeye House, in line with said initial point and the southern edge of Walker's Plains; thence on said line to the place of beginning.

County seat—Quincy.

NOTE.—Stats. 1854, p. 120; 1864, p. 264; 1866, p. 605; 1868, p. 462. Arthur Keddie, Esq., County Surveyor of Plumas County, furnished valuable information respecting county boundaries, including this county.

#### SIERRA.

3921. Beginning at the south corner of Plumas, Sierra.  
in the center of Slate Creek, as established in Section 3920; thence easterly, on southern line of Plumas, as established in said section, to the southeast corner thereof and southwest corner of Lassen; thence east, to the State line, forming northeast corner; thence south, on said State line, to the northeast corner of Nevada County, a point east of the source of the south fork of the middle Yuba River; thence west, to the source of and down the south fork and middle Yuba River, to a point ten miles above the mouth of the latter; thence in a straight line northerly, to a point on the north fork of the Yuba River, known as Cut-eye Foster's Bar, down said river to the mouth of Big Cañon Creek; then up said creek, four miles; thence in a straight line to the place of beginning.

County seat—Downieville.

NOTE.—Stats. 1852, p. 230; 1863, p. 114; 1866, p. 228; 1868, p. 462.

#### BUTTE.

3922. Beginning at the northwest corner of Yuba, Butte.  
in Feather River, at the mouth of Honcut Creek; thence northeasterly, up the Honcut Creek and the north or Natchez branch of the same, to its source, on line established by Surveyor General on survey of Westcoatt and Henning, eighteen hundred and fifty-

nine; thence to the summit line of the ridge dividing the waters of the Yuba and Feather Rivers; thence northeasterly, up said ridge, on line of said survey, to the third station tree westerly from the Woodville House; thence in a right line fifty chains, more or less, to a station tree easterly from said house about twenty-six chains, said right line passing about three chains northerly of said house; thence northeasterly on said ridge and survey to a point on line of said survey a little westerly from the village of Strawberry Valley, which point is two thousand feet distant westerly in right line from point of highest altitude on line of said survey east and within three hundred yards of the village of Strawberry Valley; thence to the common corner of Plumas, Butte, and Yuba, as established in Section 3920; thence northwesterly, on southwesterly line of Plumas, as established in said section, to the most eastern southeast corner of Tehama, as established in Section 3915, forming also the north corner of Butte; thence southwesterly, on the southeasterly line of Tehama, to the southeast corner of Tehama, at point of intersection of Rock Creek and southern line of Township Twenty-four North, Mount Diablo base; thence west on said township line to the Sacramento River; thence down said river to Placer City; thence on line of Colusa southeasterly to Watson's bridge, on Butte Creek; thence on said county line, down Butte Creek, to the northwest corner of Sutter County, as established in Section 3926; thence east, on north line of Sutter, to Feather River; thence down Feather River to place of beginning.

County seat—Oroville.

NOTE.—Stats. 1851, p. 177; 1853, p. 53; 1854, p. 129; 1856, p. 118; 1856, p. 124; 1856, p. 222; 1857, p. 25; 1857, p. 109; 1857, p. 120; 1859, p. 359; 1860, p. 115; 1861, p. 167. The description of the calls at "Woodville House" and "Strawberry Valley" are not such as would have been adopted from choice if there had

been sufficient data from which to have made them otherwise. The Legislature, in breaking into the line of the survey (by Acts of 1860, 1861), in one instance commenced at an undeterminate point on the line, and in both instances ran in opposite directions from the original survey. The two Acts have been made to harmonize as well as possible with the original survey.

## NEVADA.

3923. Beginning at northwest corner, at a point Nevada.  
in the main Yuba River at the mouth of Deer Creek; thence up the Main Yuba, to the mouth of the Middle Yuba; thence up the latter, to the mouth of the south fork of the same; thence up the south fork, to its source; thence east, to the eastern line of the State, all on the southeastern and southern lines of Yuba and Sierra; thence south, along the State line, to the northeast corner of Placer, as established in Section 3924; thence westerly, on the northern line of Placer, as established in said section, to the source of Bear River; thence down Bear River, to a point south of the junction of Deer Creek and the Main Yuba, forming southwest corner; thence north, to the place of beginning.

County seat—Nevada City.

NOTE.—Stats. 1851, p. 177; 1852, p. 190; 1852, p. 191; 1856, p. 143.

## PLACER.

3924. Beginning on southwest corner, at a point Placer.  
where the west line of Range Five East, Mount Diablo meridian, intersects the northern line of Sacramento County, as established in Section 3928; thence north, to the northwest corner of Township Twelve North, Range Five East; thence east, to the southwest corner of Section Thirty-four, Township Thirteen North, Range Five East; thence north, to Bear River; thence on southern line of Nevada, up said river, to its source; thence east, in a direct line, to the eastern line of the

State of California, forming northeast corner; thence southerly, along said line, to the northeast corner of El Dorado, as established in Section 3927; thence westerly, on the northern lines of El Dorado and Sacramento, as established in Sections 3927 and 3928, to the place of beginning.

County seat—Auburn.

NOTE.—Stats. 1851, p. 176; 1866, p. 223; 1870, p. 294.

#### YUBA.

Yuba.

3925. Beginning at southwest corner, at junction of Feather and Bear Rivers; thence up Bear River, on the line of Sutter and Placer, to southwest corner of Nevada, as established in Section 3923; thence north, on Nevada line, to the junction of Deer Creek and Main Yuba; thence up the Main to the Middle Yuba, and up the Middle Yuba ten miles, to the southwest corner of Sierra, as established in Section 3921; thence in direct line northerly, and on line of Sierra, to Cut-eye Foster's Bar, on North Yuba River; thence down the river to the mouth of Big Cañon Creek; thence up said creek four miles; thence in direct line to south corner of Plumas and northwest corner of Sierra, in Slate Creek, as established in Sections 3920 and 3921; thence northwesterly, in a direct line, to common corner of Plumas, Butte, and Yuba, in front of Buckeye House, as established in Section 3920; thence on southwestern line of Butte, as established in Westcoatt and Henning's survey and map, down the Honcut Creek, to its junction with Feather River; thence down Feather River, to the place of beginning.

County seat—Marysville.

NOTE.—Stats. 1851, p. 176; 1852, p. 230; 1860, p. 115; 1861, p. 167; 1866, p. 228.

## SUTTER.

**3926.** Beginning at northwest corner of Sacramento County, as established in Section 3928; thence up the Sacramento River to the mouth of Butte Creek; thence up said creek to its intersection with the south line of Section Nineteen, Township Seventeen North, Range One East, Mount Diablo base and meridian; thence east, on section lines, to Feather River; thence down Feather River to the mouth of Bear River; thence up Bear River to northwest corner of Placer, as established in Section 3924; thence along the western boundary of Placer to the southwest corner thereof; thence westerly, along the northern boundary of Sacramento County, to the place of beginning.

County seat—Yuba City.

NOTE.—Stats. 1851, p. 176; 1852, p. 237; 1854, p. 26; 1856, p. 231; 1864, p. 301; 1866, p. 223; 1870, p. 294.

## EL DORADO.

**3927.** Beginning on the west corner, at the junction of the North and South Forks of the American River; thence up the North Fork to the mouth of the Middle Fork; thence up the Middle Fork to the mouth of the South Fork of the Middle Fork at Junction Bar; thence up said last named fork to a point where the same is intersected by the Georgetown and Lake Bigler trail; thence along said trail to Sugar Pine Point, on the western shore of Lake Bigler; thence east to the State line; thence south and southeasterly, on the State line, to the northern corner of Alpine, being the point where the State line crosses the eastern summit line of the Sierra Nevada Mountains; thence southwesterly, along the western line of Alpine, as established in Section 3931, to the common corner of Alpine, Amador, and El Dorado.

as established by said section; thence westerly, on the northern line of Amador, as established in Section 3930, and down the Consumnes River and South Fork thereof to the eastern line of Sacramento, as established in Section 3928; thence northerly, by the eastern line of Sacramento, to the South Fork of the American River; thence down the latter to the place of beginning.

County seat—Placerville.

NOTE.—Stats. 1851, p. 176; 1857, p. 33; 1863, p. 231; 1863, p. 349; 1864, p. 178.

#### SACRAMENTO.

Sacra-  
mento.

3928. Beginning on northern line of the county at a point ten miles north of a point which was on the thirtieth of March, eighteen hundred and fifty-seven, the mouth of the American River; thence easterly, to the junction of the north and south forks of said river; thence up the principal channel of the South Fork to a point one mile above the head of Mormon Island, so as to include said island in Sacramento County, forming northeast corner; thence southerly to a point on the Cosumnes River eight miles above the house of William Daylor; thence south to Dry Creek, forming southeast corner; thence down said creek to its entrance into the Mokelumne River; thence down the Mokelumne River to a point where said river divides into east and west branches; thence down the east branch to its junction with the west branch; thence down said river to its junction with the San Joaquin River; thence down the San Joaquin River to the mouth of the Sacramento River, at the head of Suisun Bay, forming southwest corner; thence up the Sacramento River to the mouth of Merritt's Slough; thence up said slough to the mouth of Sutter Slough; thence up said Sutter Slough to the Sacramento River; thence up the Sacramento River to a point west of the place

of beginning, forming northwest corner of Sacramento County; thence east to the place of beginning.

County seat—Sacramento City.

NOTE.—Stats. 1851, p. 174; 1857, p. 132; 1861, p. 221; 1866, p. 223; 1870, p. 294.

YOLO.

3929. Beginning on southeast corner, at the most Yolo.  
easterly northeast corner of Solano, in Sutter Slough, at its intersection with the First Standard North; thence west on said standard line to west line of Range Three East, Mount Diablo meridian; thence north on said range line to the northeast corner of Township Seven North, Two East; thence west nine and seventy-two one hundredths chains to southeast corner of Township Eight, Two East; thence north on easterly line of said township to the old bed of Putah Creek; thence westerly up the old bed and main Putah Creek to a point on eastern line of Napa, in the cañon called Devil's Gate, where the highest ridge of mountains divides the waters of the Sacramento from Berryessa Valley, forming the most westerly of the southwest corners of Yolo and northwest corner of Solano; thence northerly along the highest ridge of said mountains to Cache Creek; thence east to the summit of the spur of the Coast Range which divides the waters flowing east into Bear Creek and Stony Creek, and those flowing west into the north fork of Cache Creek; thence northerly along the said dividing ridge, following the divide of said waters to the summit of the Coast Range of mountains on the easterly line of Napa and Lake and to the southwest corner of Colusa, as established in Section 3916; thence easterly on southern line of Colusa, as established in said section, to Sacramento River, forming the northeast corner at the point of intersection of the southern line of Township Thirteen

North, Mount Diablo base; thence down said river to Sutter Slough; thence down said slough to the place of beginning.

County seat—Woodland.

NOTE.—Stats. 1851, p. 179; 1857, p. 108; 1866, p. 162; 1870, p. 294. This section was amended so as to read as published in the text, by Act of April 1st, 1872, cited in note to Sec. 18, ante. See Act of 1871-2, in note to Sec. 3917, ante—boundary between Lake and Yolo Counties.

#### AMADOR.

**Amador.**      **3930.** Beginning at southwest corner, in the Mokelumne River, on the eastern boundary of San Joaquin, as established in Section 3932; thence up said river to its junction with the north fork of the same; thence up the said north fork to the line of Alpine, being at a point south of common corner of Amador, Alpine, and El Dorado, which is in the center of the Amador and Nevada road, in front of Z. Kirkwood's house, as established in Section 3931; thence north by the line of Alpine to said common corner; thence westerly along said road to a point east of the source of the south fork of the south fork of the Cosumnes River; thence west to said source; thence down the south fork of the south fork and the south fork and the main Cosumnes River to the eastern line of Sacramento, as established in Section 3928; thence by eastern lines of Sacramento and San Joaquin to the place of beginning.

County seat—Jackson.

NOTE.—Stats. 1854, p. 46; 1855, p. 113; 1855, p. 134; 1857, p. 251; 1863, p. 231; 1864, p. 178.

#### ALPINE.

**Alpine.**      **3931.** Beginning at north corner, at a point where the State line crosses the east summit of the Sierra Nevada Mountains, being the most easterly corner of



El Dorado; thence southwesterly along said summit to a point two miles west of James Green's house, in Hope Valley, called Thompson's Peak; thence southwesterly in a direct line to a point on the Amador and Nevada turnpike road in front of Z. Kirkwood's house, being common corner of Amador, Alpine, and El Dorado; thence south across the north fork of the Mokelumne River to the road leading from West Point, in Calaveras, to Big Tree road, near the Big Meadows; thence easterly along said West Point road to the Big Tree road; thence easterly in a direct line to where the Sonora trail strikes the middle fork of the Stanislaus River; thence easterly along said trail to the summit of the Sierra Nevada Mountains; thence northerly along said summit to the dividing ridge between West Walker and Carson Rivers; thence northeasterly along said dividing ridge to the State line, forming easterly corner of Alpine and northerly corner of Mono; thence northwest along said State line to the place of beginning.

County seat—Silver Mountain.

NOTE.—Stats. 1864, p. 178; 1866, p. 144; 1870, p. 20.

#### SAN JOAQUIN.

3932. Beginning at the junction of the San Joaquin and Mokelumne Rivers, on the line of Sacramento County; thence up the latter to the mouth of Dry Creek; thence up Dry Creek to the southeast corner of Sacramento, as established in Section 3928; thence southeasterly, to a point on Mokelumne River, being the point of beginning of survey of Boucher and Wallace of line between San Joaquin and Calaveras Counties, May, eighteen hundred and sixty-four; thence southeasterly, on the line of said survey, to the extreme northern corner of Stanislaus County, on north side of and near to Calaveras River, at a point on western line of Range Ten East, Mount Diablo

San  
Joaquin.

meridian, as established by survey of George E. Drew, approved May, eighteen hundred and sixty, shown on map of said survey; thence south, on said range line, to Stanislaus River; thence down said river to its confluence with the San Joaquin; thence southwest, to the summit of the Coast Range, as shown on survey and map of Wallace and Stakes, May, eighteen hundred and sixty-eight, and forming the common corner of San Joaquin, Stanislaus, Santa Clara, and Alameda, as shown also on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence northwesterly, following the summit of the said Coast Range to a post near the middle of Section Thirty-two, Township Four South, Range Four East; thence north to the southeast corner of Contra Costa, being a point on the west channel of the San Joaquin River, as laid down on Gibbe's map, at a bend where the said west channel, running downward, takes a general course north, which point is shown on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence down the said west channel to its confluence with the main river; thence down said river to the place of beginning.

County seat—Stockton.

NOTE.—Stats. 1851, p. 175; 1852, p. 178; 1852, p. 180; 1860, p. 34. John Wallace, Civil Engineer of San Joaquin County, furnished an elegant map of that county, and much valuable information in relation to county boundaries, which were used in framing this and other sections.

#### STANISLAUS.

**Stanislaus.** 3933. Beginning at common corner of Stanislaus, Santa Clara, Alameda, and San Joaquin, on the summit of Mount Boardman, of the Mount Diablo Range, as shown on survey and map of Wallace and Stakes, May, eighteen hundred and sixty-eight; thence southeasterly, on the summit line of said range, being east-

ern line of Santa Clara, to the northwest corner of Merced, forming the southwest corner of Stanislaus, as established by survey and map of A. J. Stakes, July, eighteen hundred and sixty-eight; thence northeasterly, on line as established by said last named survey, to the junction of the Merced and San Joaquin Rivers; thence down the San Joaquin seven miles; thence in a direct line a little north of east to a monument established by survey of A. J. Stakes, being on the summit of the ridge between Merced and Stanislaus, and marking common corner of Tuolumne, Merced, Mariposa, and Stanislaus; thence northwesterly, in a direct line, and crossing the Stanislaus River, to monument established by survey and map of George E. Drew, May, eighteen hundred and sixty, on the north bank of said last named river; thence northwesterly, on line of said survey, to its intersection with western line of Range Ten East, Mount Diablo meridian, which point is marked by a monument establishing the north corner of Stanislaus County; thence south, on said range line, to Stanislaus River; thence down the latter to its mouth in San Joaquin River; thence southwesterly on line as surveyed and mapped by Wallace and Stakes, May, eighteen hundred and sixty-eight, to the place of beginning.

County seat—Modesto.

NOTE.—Stats. 1854, p. 40; 1855, p. 245; 1860, p. 34; 1870, p. 776.

#### MERCED.

3934. Beginning at northwest corner, being southwest corner of Stanislaus, as shown on survey and map of A. J. Stakes, eighteen hundred and sixty-eight; thence northeasterly, on southern line of Stanislaus, as described in Section 3933, to common corner of Tuolumne, Mariposa, Merced, and Stanislaus, as established in said section; thence southeasterly, by Merced.

direct line, being western line of Mariposa, to Phillips' Ferry, on Merced River; thence southeasterly, on line of Mariposa, being line shown on "Map of Mariposa County," to Newton's Crossing on Chowchilla Creek, forming southeast corner; thence down the northern side and on high water mark, being on line of Fresno, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, to the eastern line of Monterey, on summit of Coast Range, forming southwest corner; thence northwesterly, by said summit and line of Monterey and Santa Clara, to the place of beginning.

County seat—Snelling.

NOTE.—Stats. 1855, p. 125; 1856, p. 183; 1866, p. 172; 1868, p. 56.

#### MONO.

Mono.

3935. Beginning at north corner on State line, being east corner of Alpine, as established in Section 3931; thence southwesterly, on the easterly line of Alpine, as established in Section 3931, to the main summit of the Sierra Nevada Mountains; thence southerly, along said summit, on easterly line of Alpine, Tuolumne, and Fresno, to a point where the northern line of Township Six South, Mount Diablo base, intersects said summit line, forming southwest corner; thence east, on said township line, being the northern line of Inyo, to the eastern line of the State, forming southeast corner; thence northwest, on the State line, to the place of beginning.

County seat—Bridgeport.

NOTE.—Stats. 1861, p. 225; 1864, pp. 30, 178; 1866, pp. 144, 335; 1870, pp. 20, 421.

#### CALAVERAS.

Calaveras.

3936. Beginning at southern corner, at a point in the Stanislaus River where it intersects the eastern line of Stanislaus County, as established in Section

**3933**, being a point one mile north of Knight's Ferry, and being the western corner of Tuolumne County; thence up said river and north fork thereof, to the easterly line of Alpine, as established in Section 3931; thence northerly, on the line of Alpine, to the southeast corner of Amador, as established in Section 3930 and 3931; thence southwesterly, on the southern line of Amador, down the Mokelumne River, to the southwest corner of Amador, on eastern line of San Joaquin County; thence southerly and southeasterly, on line of San Joaquin and Stanislaus, as established in Sections 3932 and 3933, to the place of beginning.

County seat—San Andreas.

NOTE.—Stats. 1851, p. 175; 1854, p. 46; 1855, p. 134; 1861, p. 235; 1864, p. 178.

#### TUOLUMNE.

**3937**. Beginning at the most western corner, being Tuolumne. the southern corner of Calaveras, as established in Section 3936, in Stanislaus River; thence southeasterly to common corner of Merced, Mariposa, Stanislaus, and Tuolumne, as established in Section 3933; thence easterly on northern line of Mariposa, following summit line of the dividing ridge between Tuolumne and Merced Rivers, to Mount Lyell, as marked on Warren Holt's map, eighteen hundred and sixty-nine, and the summit of the Sierra Nevada Mountains, being on the western line of Mono and common corner of Tuolumne, Mariposa, and Fresno; thence northerly by the line of Mono, being the summit line of the Sierra Nevada Mountains, to the southern corner of Alpine, as established in Section 3931; thence northwesterly by the line of Alpine to the southeastern corner of Calaveras; thence westerly on the line of Calaveras and down the Stanislaus River, to the place of beginning.

County seat—Sonora.

NOTE.—Stats. 1851, p. 175; 1855, p. 245; 1859, p. 213; 1864, p. 178; 1866, p. 144; 1870, p. 20.

## MARIPOSA.

**Mariposa.** 3938. Beginning at the initial point of Fresno County, being where the Stockton road to Millerton crosses the Chowchilla Creek, known as Newton's Crossing; thence north, forty-five degrees east, to the southwest corner of Section Eleven, Township Six South, Range Twenty East, Mount Diablo base and meridian; thence east, following section lines to main ridge between waters of Big Creek and Fresno River; thence easterly on the main ridge which divides the waters of the Merced and San Joaquin Rivers, to the intersection of the same with the summit line of the Sierra Nevada Mountains and western line of Mono, the same point forming common corner of Tuolumne, Fresno, and Mariposa, as described in Section 3937; thence westerly, by the southern boundary of Tuolumne, to the southwest corner thereof, being common corner of Stanislaus, Merced, Tuolumne, and Mariposa; thence southeasterly, on western line of Merced, as established in Section 3934, to the place of beginning.

County seat—Mariposa.

NOTE.—Stats. 1851, p. 175; 1852, p. 240; 1855, p. 125; 1856, p. 183; 1861, p. 235; 1870, p. 20; 1870, p. 449.

Stats. 1871-2, p. 891.

*An Act to better define the boundary line of Mariposa and Fresno Counties.*

[Approved April 1, 1872.]

[Enacting clause.]

SECTION 1. The line at present known as the boundary line between Mariposa and Fresno Counties, from the westerly point of junction of said counties, running easterly to the southwest corner of section eleven and the northwest corner of section fourteen, in township six south, range twenty east, of Mount Diablo meridian; thence east to the northwest corner of section fourteen, in township six south, range twenty-one east; thence north to the northwest corner of section thirty-five, in township five south, range twenty-one east; thence

east to the southwest corner of section thirty, in township five south, range twenty-two east; thence north to the southwest corner of the Mariposa Big Tree Grant; thence east along the line of said grant to the southeast corner of said grant; thence north along the line of said grant to the northeast corner of the same; thence north to the original boundary line between the Counties of Mariposa and Fresno; thence along said line to the present boundary line, is hereby declared and constituted the boundary line between said counties.

SEC. 2. The respective County Surveyors of Mariposa and Fresno Counties shall proceed to survey and complete said defining line, with the necessary monuments, prior to the first day of September, 1872. Reasonable compensation, not to exceed one hundred and fifty dollars each, may be allowed by the Supervisors of Mariposa and Fresno Counties, to be paid out of the county General Funds of said counties; and in case of a disagreement, they shall be empowered to call in a third surveyor as umpire, whose decision shall be final, but whose services shall in no case be an additional charge.

SEC. 3. The Act entitled "An Act to better define the boundary line between Fresno and Mariposa Counties," approved March 29, 1870, is hereby repealed.

SEC. 4. This Act shall take effect immediately.

#### FRESNO.

3939. Beginning at southeast corner of Merced Fresno. and southwest corner of Mariposa, being a point where the Stockton road to Millerton crosses the Chowchilla Creek, known as Newton's Crossing; thence westerly down said stream, on the north side, on line of high water mark, being on southeastern line of Merced, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, and on line of Merced, to the eastern boundary line of Monterey, as described in Section 3948, being on summit of Coast Range; thence, following said boundary line on said summit, in a southeasterly direction, to a point in the same, which point is south forty-five degrees west from the point on King's River where

northern line of Township Sixteen South crosses the same; thence north, forty-five degrees east, to said point on King's River; thence east, along northern line of Township Sixteen South, to the dividing ridge between the waters of King's River and Kawdah River; thence easterly, on the said dividing ridge, to the summit of the Sierra Nevada, being the western line of Inyo; thence northwesterly, on the summit line and lines of Inyo and Mono, to Mount Lyell, the common corner of Tuolumne, Mariposa, and Fresno; thence westerly and southwesterly, on the southeasterly line of Mariposa, as established in Section 3938, to the place of beginning.

County seat—Millerton.

NOTE.—Stats. 1856, p. 183; 1861, p. 235; 1866, p. 144; 1866, p. 355; 1870, p. 20; 1870, p. 421; 1870, p. 449. See Act of 1872, in preceding note.

#### TULARE.

Tulare.

3940. Beginning at southwest corner, being common corner of Monterey, San Luis Obispo, Kern, and Tulare, and being the point where the line of the Sixth Standard South crosses the summit line of the Mount Diablo Range of mountains; thence east, on said standard, to the point of intersection with summit line of the Sierra Nevada Mountains, forming the southeast corner of Tulare and southwest corner of Inyo; thence northwesterly, on said summit, being on the western line of Inyo, to the east corner of Fresno, as established in Section 3939; thence on the southern line of Fresno to the eastern line of Monterey; thence southerly, on the line of Monterey, as established in Section 3948, to the place of beginning.

County seat—Visalia.

NOTE.—Stats. 1851, p. 173; 1852, p. 240; 1856, p. 183; 1864, p. 528; 1866, p. 355; 1866, p. 796.



## KERN.

3941. Beginning at northwest corner, being com- Kern.  
mon corner of San Luis Obispo, Monterey, Tulare,  
and Kern, as established in Section 3940; thence east,  
on Sixth Standard South, Mount Diablo base, to the  
northwest corner of San Bernardino, as established in  
Section 3943; thence south, on the westerly line of San  
Bernardino, to southern line of Township Nine North,  
San Bernardino base, forming southeast corner; thence  
west along said line and extension thereof to the sum-  
mit of the Coast Range, being on the line of Santa  
Barbara, forming southwest corner; thence northwest-  
erly, on said summit line, being eastern line of Santa  
Barbara and San Luis Obispo, to the place of begin-  
ning.

County seat—Havilah.

NOTE.—Stats. 1866, p. 796.

## INYO.

3942. Beginning at the southeast corner of Tulare, Inyo.  
as established in Section 3940, being the point of inter-  
section of Sixth Standard South, Mount Diablo base,  
with summit line of Sierra Nevada Mountains; thence  
east, by said standard and extension thereof, to the  
eastern line of the State, forming southeast corner;  
thence northwesterly, on State line, to the southeast  
corner of Mono, as established in Section 3935; thence  
west on the southern line of Mono to the summit of  
the Sierra Nevada Mountains, being on the Eastern  
line of Fresno, and forming the southwest corner of  
Mono and northwest corner of Inyo; thence southeas-  
terly on said summit line to the place of beginning.

County seat—Independence.

NOTE.—Stats. 1866, p. 355; 1870, p. 20; 1870, p. 421.

## SAN BERNARDINO.

San Bernardino.

3943. Beginning at the southwest corner, a little northwesterly of Laguna Temecula, at a point on the northern line of San Diego, as established in Section 3944, where a south line drawn from the highest peak of the Sierra de Santiago intersects the said boundary line; thence northwesterly on the summit of said Sierra to the Santa Anna River, between the ranch of Sierra and the residence of Bernardo Yerba; thence across the Santa Anna River along the summit of the range of hills that lie between the Cayotes and Chino (leaving the ranchos Gutiveras and Ybana to the west of this line) to the southwest corner of the ranch San José; thence northerly along the eastern boundaries of said ranch and of San Antonio and the western and northern boundaries of Cucaimonga ranch to the ravine of Cucaimonga; thence northerly up said ravine to its source in the Coast Range; thence north, on the easterly line of Los Angeles and Kern, to the Sixth Standard South, Mount Diablo base, being the northeast corner of Kern and northwest corner of San Bernardino; thence east by said standard line and extension thereof to the State line; thence southeasterly on said State line to the Colorado River; thence down said river to the northern boundary line of San Diego County; thence westerly along the northern boundary line of San Diego County, as established in Section 3944, to the place of beginning.

County seat—San Bernardino.

NOTE.—Stats. 1853, p. 119; 1857, p. 165; 1866, p. 355; 1866, p. 796; 1868, p. 604; see note to Sec. 3944, post.

## SAN DIEGO.

San Diego.

3944. Beginning at south corner of Los Angeles in the Pacific Ocean, opposite San Mateo Point; thence northerly along the western line of Rancho

Santa Margarita to the southern line of Mission Viejo or La Paz; thence along the southern and eastern line of La Paz to a point two miles north of the south boundary line of Township Seven South, Range Six West, San Bernardino base and meridian; thence northeasterly, to the southwest corner of San Jacinto Nuevo, in Township Four South, Range Four West; thence north along west boundary of said rancho to line between Townships Three and Four South; thence east to line between ranges Two and Three West; thence north on range line to a point where a line parallel with the southern boundary between the United States and Mexico will just clear the Rancho San Jacinto Viejo; thence northeasterly along such parallel line to the Colorado River; thence down that river to its junction with the boundary line between the United States and Mexico; thence westerly, following that boundary line into the Pacific Ocean; thence northerly to place of beginning.

County seat—San Diego.

NOTE.—Stats, 1851, p. 172; 1866, p. 604. These boundaries were fixed by the Legislature after consulting a letter received by the Commissioners from James Pascol, Esq., County Surveyor of San Diego County, on the subject of boundaries of this and adjoining counties.

#### LOS ANGELES.

3945. Beginning at southeast corner of Santa Barbara, in the Pacific Ocean, at a point on extension line of the northern boundary of the rancho called Malaga, western corner; thence northeasterly, so as to include said rancho, to the northwest corner of the rancho called Triumfo, running on northerly line of the same to the northeast corner thereof; thence to the summit of the ridge of hills called Santa Susanna; thence in a direct line northwesterly, to the southwest corner of Kern, as established in Section 3941, forming the north-

Los Angeles.

west corner of Los Angeles; thence east, on southern line of Kern to the western line of San Bernardino, as established in Section 3943; thence southerly, on western line of San Bernardino to its point of intersection with northern line of San Diego, as established in said section; thence southwesterly, on San Diego line, as established in Section 3944, to northwest corner of San Diego, in Pacific Ocean; thence northwesterly, along ocean shore to place of beginning; including the Islands of Santa Catalina, San Clement, and the islands off the coast included in Los Angeles County.

County seat—Los Angeles.

NOTE.—Stats. 1851, p. 172; 1853, p. 119; 1856, p. 53; 1857, p. 165; 1868, p. 604; see note to Sec. 3944, ante.

#### SANTA BARBARA.

Santa  
Barbara.

3946. Beginning at the western corner of Los Angeles, as established in Section 3945; thence northerly, on westerly line of Los Angeles, as described in said section, to the northwest corner thereof, on the summit of the Coast Range, being also the southwest corner of Kern, as established in Section 3941; thence northwesterly, on the summit line, being also on western boundary of Kern, to a point of intersection with the southern line of Township Ten North, San Bernardino base; thence west, on said township line, to the Santa Maria River; thence down said river, and down the creek which divides that part of Gaudalupe Rancho known as La Larga from that known as Oso Flacco, to a point in the Pacific Ocean opposite the mouth of said creek, forming northwest corner; thence southeasterly, by the ocean shore, to the place of beginning; including the Islands of Santa Barbara, San Nicolas, San Miguel, Santa Rosa, and Santa Cruz.

County Seat—Santa Barbara.

NOTE.—Stats. 1851, p. 173; 1852, p. 218; 1854, p. 148; 1866, p. 796. By Act of 1871-2, given at length in note

at the end of this Chapter, the County of Ventura was created out of the territory of Santa Barbara. For boundary thereof, see Secs. 1 and 2 of said Act.

## SAN LUIS OBISPO.

3947. Beginning in Pacific Ocean, at northwest-  
 ern corner of Santa Barbara, as established in Section  
 3946; thence easterly, on the northern line of Santa  
 Barbara, up the Santa Maria River, to intersection of  
 southern line of Township Ten North, San Bernardino  
 base; thence east on said line to point on summit of  
 Coast Range, forming the southeast corner, also north-  
 east corner of Santa Barbara; thence northwesterly  
 on summit line, being western line of Kern, to its  
 intersection with Sixth Standard South, Mount Diablo  
 base, being the common corner of Tulare, Kern, Mon-  
 terey, and San Luis Obispo; thence west on said  
 standard line and extension thereof to the Pacific  
 Ocean; thence southerly along the shore to the place  
 of beginning.

San Luis  
 Obispo.

County seat—San Luis Obispo.

NOTE.—Stats. 1851, p. 173; 1854, p. 148; 1861, p. 349;  
 1863, p. 358; 1866, p. 796. A communication from  
 County Surveyor R. R. Harris, together with map,  
 contains a complete description by the lines of the  
 Government surveys, which the Commission advised  
 to be adopted, and to which they called attention of  
 the Legislature prior to the adoption of this Code.

## MONTEREY.

3948. Beginning in Pacific Ocean, at southwest  
 corner of Santa Cruz, as established in Section 3949;  
 thence west to the mouth of Pajaro River, on the Bay  
 of Monterey; thence up said stream to its source, the  
 small Lake San Felipe; thence along the northern  
 and western banks of said lake to the Creek San  
 Felipe; thence east to the summit line of the Coast  
 Range, forming northeastern corner; thence south-  
 easterly along the summit of the Coast Range to the

Monterey.

Sixth Standard South, Mount Diablo base, being the common corner of San Luis Obispo, Kern, Tulare, and Monterey; thence following the northern boundary of San Luis Obispo County, on said standard line and extension thereof, to the Pacific Ocean; thence along the shore northerly to the place of beginning.

County seat—Monterey.

NOTE.—Stats. 1851, p. 173; 1855, p. 125; 1856, p. 183; 1861, p. 349; 1863, p. 358; 1870, p. 411. The attention of the legislative committee was called to a letter addressed to the Commission from H. M. Hayes, County Surveyor of Monterey County.

#### SANTA CRUZ.

**Santa Cruz.** 3949. Beginning at the south corner of San Mateo County, at a point in the Pacific Ocean south forty-five degrees west, three miles from the intersection of the east line of Rancho Punta del Año Nueva with said ocean, forming western corner; thence north, forty-five degrees east, to said point of intersection; thence northerly, following the eastern line of said rancho, to its intersection with the south line of Township Eight South, Range Four West, Mount Diablo base and meridian; thence east to the southeast corner of said township; thence north to the northeast corner of Section Twenty-five of said township; thence east to the northeast corner of Section Twenty-six, Township Eight South, Range Three West; thence north to the summit of Santa Cruz Mountains, being western line of Santa Clara County; thence southeasterly along the summit of said mountains, on the western line of Santa Clara, to the Pajaro River, forming southeast corner, on northern line of Monterey; thence westerly along said river, on northern line of Monterey, to the Bay of Monterey, and three miles westerly into the ocean,

forming southwest corner; thence northwesterly along the shore to the point of beginning.

County seat—Santa Cruz.

NOTE.—Stats. 1851, p. 173; 1851, p. 174; 1868, p. 174.

SAN FRANCISCO (CITY AND COUNTY.)

3950. Beginning at the southwest corner, being <sup>San Francisco.</sup> northwest corner of San Mateo, in Pacific Ocean, on the extension of northern line of Township Three South, of Mount Diablo base; thence northerly along the Pacific Coast, to its point of intersection with westerly extension of low water line on northern side of the entrance to San Francisco Bay, being southwest corner of Marin and northwest corner of San Francisco; thence easterly, through Point Bonita and Point Caballo, to the most southeastern point of Angel Island, all on the line of Marin, as established in Section 3957; thence northerly, along the easterly line of Marin, to the northwest point of Golden Rock (also known as Red Rock), being a common corner of Marin, Contra Costa, and San Francisco; thence due southeast four and one half miles, more or less, to a point distant three statute miles from the natural high water mark on the eastern shore of San Francisco Bay, being a common corner of Contra Costa, Alameda, and San Francisco; thence southeasterly, in a direct line, to a point three miles from said eastern shore, and on the line first named (considered as extending across said bay); and thence west along said first named line to the place of beginning. The islands known as the Farallones shall be attached to and be a part of said city and county.

NOTE.—The identity of Golden Rock and Red Rock does not admit of a doubt. No other rock or island in San Francisco Bay will answer to the calls of the statutes. It is directly referred to in the boundaries of Marin (Stats. 1868, p. 347), and indirectly confirmed by

the wording in section ten, Act of April 25th, 1851 (p. 174), viz: " \* \* to Golden Rock; thence *up the middle of the Bay of San Pablo,*" etc. The party who drew up the original draft of the bill in 1851, was Commodore Selim Woodworth, of San Francisco. See note to Sec. 3953, post.

## SAN MATEO.

**San Mateo** 3951. Beginning at the southwest corner, being west corner of Santa Cruz County, as established in Section 3949; thence on northwestern line of Santa Cruz, as established in said section, to the southwestern line of Santa Clara, being the summit line of the Santa Cruz Mountains; thence northwesterly, by said summit line, to the source of San Francisquito Creek; thence down the south branch thereof, and down said creek to its mouth; thence to a point in the middle of San Francisco Bay, opposite said mouth, forming common corner of San Mateo, Santa Clara, and Alameda; thence in a direct line to the southeast corner of San Francisco City and County, as established in Section 3950; thence due west, on southern line of San Francisco City and County, to the southwest corner thereof; thence southerly, along the ocean shore, to the point of beginning.

County seat—Redwood City.

NOTE.—Stats. 1856, p. 176; 1857, p. 222; 1868, p. 174. By referring to statutes 1857, p. 222, it will be observed that the northern boundary of San Mateo runs east along township line to the eastern boundary of the County of San Francisco, as established by an Act entitled "An Act dividing the State into counties, etc.," passed April 25th, 1851 (p. 174). Now, the eastern boundary of San Francisco of 1851 does not coincide at that point with the present boundary. For the sake of uniformity, and in order to avoid a jog in the western boundary of Alameda, the San Mateo boundary line is made to conform to the present San Francisco and Alameda lines, as is shown on a map prepared by G. F. Allardt, Esq., Chief Engineer of the Tide Land Survey, now on file in office of the Surveyor General.—See note to Sec. 3953, post.



## SANTA CLARA.

3952. Beginning at a point opposite the mouth of San Francisquito Creek, being common corner of Alameda, San Mateo, and Santa Clara, as established in Section 3951; thence easterly, to a point at the head of a slough, which is an arm of the Bay of San Francisco, at its head, making into the main land in front of the Gegara Ranches; thence easterly, to a lone sycamore tree that stands in a ravine between the dwellings of Fluhencia and Valentine Gegara; thence easterly, up said ravine, to the top of the mountains, and as surveyed by Horace A. Higley, and shown on survey and map of Alameda County, eighteen hundred and fifty-seven; thence on a direct line easterly, to the common corner of San Joaquin, Stanislaus, Alameda, and Santa Clara, on the summit of the Coast Range, as established in Section 3932; thence southeasterly, following the summit of the Coast Range, to the northeast corner of Monterey County, as established in Section 3948; thence westerly, following the northern boundary of Monterey County to the southeast corner of Santa Cruz County, as established in Section 3949; thence northwesterly, following the summit of the Santa Cruz Mountains, to the head of San Francisquito Creek; thence down said creek, to its mouth; thence in a direct line to the place of beginning.

County seat—San José.

NOTE.—Stats. 1851, p. 174; 1853, p. 56; 1854, p. 40; 1855, p. 125.

## ALAMEDA.

3953. Beginning at the southwest corner, being common corner of San Mateo, Santa Clara, and Alameda, as established in Section 3951; thence easterly on northern line of Santa Clara, as established in Section 3952, to common corner of San Joaquin, Stanis-

laus, Santa Clara, and Alameda, as established in Section 3932; thence northwesterly on the west line of San Joaquin County to the slough known as the Pescadora (being the west channel or old San Joaquin River); thence westerly in a straight line until it strikes the dividing ridge in the direction of the house of Joel Harlan, in Amador Valley; thence westerly along said ridge, crossing the gulch one half mile below Prince's Mill; thence to and running upon the dividing ridge between the redwoods known as the San Antonio and Prince's Woods; thence along said ridge to the head of the gulch or creek (Cerrito Creek) that divides the ranches of the Peraltas from the San Pablo Ranches; thence down said gulch to its mouth; thence westerly to the easterly line of San Francisco, as established in Section 3950; thence southeasterly along the eastern line of San Francisco and San Mateo to the place of beginning. Horace A. Higley's survey and map of Alameda County, eighteen hundred and fifty-seven, are declared to contain a more particular description of the line out of the Bay of San Francisco.

County seat—San Leandro.

NOTE.—Stats. 1851, p. 174; 1852, p. 178; 1853, p. 56; 1856, p. 145; 1857, p. 222. Sections 3950, 3953, and 3954, define in the best possible manner the boundaries of the counties therein named. No changes in the former laws were attempted by these sections, beyond bringing the boundary lines of adjoining counties together, and making perfect inclosures. G. F. Alardt, Esq., Chief Engineer of the Tide Land Survey, rendered great assistance in the matter of county boundaries. The following letter from that gentleman explains itself, and his suggestions have all been given place in the sections above mentioned:

OFFICE OF TIDE LAND COMMISSIONERS, }  
San Francisco, September 14th, 1870. }

To the Honorable Revision Commissioners, Sac.:

GENTLEMEN: A proof sheet of your Chapter on County Boundaries was handed to me by Tide Land Commissioner Bullock, who requested me to examine

those sections relating more particularly to the counties bounding upon San Francisco Bay, and to report the result of my examination to your honorable Board.

I have made the examination, and send you herewith a brief report, accompanied by a map exhibiting more clearly the boundaries in question. I also inclose your proof sheet, with corrections and marginal notes.

My connection with the work of the tide land survey has given me facilities—in fact, made it one of my official duties—to ascertain and lay down, with all possible certainty, the county lines in and around San Francisco Bay; hence I have spent much time in examining and comparing all statutes and maps bearing on the subject.

Trusting, therefore, that my suggestions will be of assistance in your complicated and arduous labors, I have the honor to remain,

Yours, very respectfully,

G. F. ALLARDT,

Chief Engineer Tide Land Survey.

#### CONTRA COSTA.

3954. Beginning in Bay of San Francisco, at the northwest point of Red Rock, being the common corner of Marin, Contra Costa, and San Francisco, as established in Section 3950; thence up the Straits and Bay of San Pablo, on eastern boundary of Marin, to point of intersection with line bearing south twenty-six and one half degrees east, and about six and one quarter miles distant from southwest corner of Napa County, as established in Section 3958, forming common corner of Marin, Solano, Sonoma, and Contra Costa, as established in Section 3955; thence to the Straits of Carquinez; thence up said straits and Suisun Bay, to the mouth of the San Joaquin River; thence up said river, to the confluence of the west and main channels thereof, as laid down on Gibbe's map; thence up the said west channel, to a point about ten miles below Moore and Rhodes' ranch, at a bend where the said west channel, running downward, takes a general course north, the point being on the westerly line of San Joaquin County, and forming the northeast corner of Alameda and south-

Contra  
Costa.

east corner of Contra Costa; thence on the northern line of Alameda, as laid down on Horace A. Higley's map, and as established in Section 3953, to the easterly line of San Francisco City and County, as established in Section 3950; thence due northwest, along said easterly line of San Francisco, four and one half miles, more or less, to the place of beginning.

County seat—Martinez.

NOTE.—Stats. 1851, p. 174; 1852, p. 178; 1853, p. 56; see note to Sec. 3953, ante.

#### SONOMA.

Sonoma.

3955. Beginning at northwest corner, at a point in the Pacific Ocean west of the mouth of Walhalla River; thence east to the mouth of said river, and up the main channel two miles; thence easterly in a direct line to the most northern and highest peak or summit of the Redwood Mountains, immediately north of Cloverdale and Oat Valley; thence east to the western boundary of Lake County, on the summit of the Mayacmas Ridge, forming northeast corner; thence southerly along the Mayacmas Mountains, and on the western lines of Lake and Napa Counties, to the westerly branch of headwaters of Huichica Creek; thence westerly on the line of Napa County to the top of the main ridge that divides the the Huichica Valley from the Sonoma Valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo Bay; thence southerly to the center of Huichica Creek; thence down said creek to its mouth, which is the southwest corner of Napa; thence on the line of Solano south, twenty-six and one half degrees east, about six and one quarter miles distant from the mouth of Huichica Creek, to the point of intersection with the westerly line of Contra Costa County, forming common corner of Marin, Solano, Contra Costa, and Sonoma, as described in Section 3954; thence fol-

lowing the northern boundary of Marin westerly to the mouth of Petaluma Creek; thence up said creek to the mouth of San Antonio Creek; thence up said San Antonio Creek to its head; thence in a direct line to the head of the Estero Americano, on the line surveyed and established by William Mock, under the direction of the Surveyor General, in the year eighteen hundred and fifty-six; thence down said Estero Americano to its mouth; thence due west three miles to a point in the Pacific Ocean; thence northwesterly by ocean shore to the point of beginning.

County seat—Santa Rosa.

NOTE.—Stats. 1851, p. 178; 1852, p. 236; 1855, p. 150; 1861, p. 361; 1868, p. 42.

#### SOLANO.

3956. Beginning at southwest corner, in San Pablo Bay, at common corner of Contra Costa, Sonoma, Marin, and Solano, as established in Section 3954; thence north, twenty-six and one half degrees west, about six and one quarter miles on the western line of Sonoma, as established in Section 3955, to the southwest corner of Napa, at the mouth of the Huichica Creek; thence east, on southern line of Napa, to the southeast corner thereof, as established in Section 3958; thence north, on line of Napa, as established in said section, to the First Standard North; thence east, along said standard, on said Napa line, to the summit of Vaca Mountains; thence northerly, on said summit and Napa line, to Devil's Gate, on Putah Creek, which point forms the northwest corner of Solano and southwest corner of Yolo; thence easterly, on line of Yolo, down said creek and old bed thereof, to its intersection with western line of Range Three East, Mount Diablo meridian, forming the northeast corner of Solano, with exterior angle in Yolo; thence south, along line of Yolo, on said range line, two and seven tenths Solano.

miles, to the north line of Township Seven North, Mount Diablo base; thence east, nine and seventy-two one hundredths chains, to northeast corner of said township; thence south, to the First Standard North, Mount Diablo base; thence east, on said standard line, to the center of Sutter Slough; thence down said slough to Merritt Slough, down Merritt Slough to the Sacramento River, down the Sacramento River about thirteen miles to Suisun Bay; thence down the bay, along the center of the main ship channel, in a westerly course, about eighteen miles, to the Straits of Carquinez; thence down the middle of said straits, and down San Pablo Bay, to the place of beginning. All these courses and lines being as shown by map and notes of William Wayne Fitch and E. H. Marshall, Surveyor and Deputy Surveyor of Solano County.

County seat—Fairfield.

NOTE.—Stats. 1851, p. 179; 1852, p. 236; 1853, p. 20; 1855, p. 77; 1857, p. 108; 1870, p. 294. Messrs. Fitch and Marshall furnished letters and maps containing valuable information respecting the boundaries of Solano and adjacent counties.

#### MARIN.

##### Marin.

3957. Beginning in the Pacific Ocean, at southwestern corner of Sonoma; thence southeasterly along southern line of Sonoma, as established in Section 3955, to the mouth of Petaluma Creek; thence to common corner of Marin, Sonoma, Contra Costa, and Solano, in San Pablo Bay, as established in Section 3955; thence southerly along the western boundary of Contra Costa, in the Bay of San Pablo, to the middle of the Straits of San Pablo; thence southerly, in a direct line, to Invincible Rock, in the Bay of San Francisco, near the entrance of the Straits of San Pablo; thence, in a direct line, to northwestern point of Red Rock; thence southerly to the extreme southeasterly point of Angel Island; thence southwesterly

to the extreme end of Point Cavallo at low water mark; thence on the line of low water mark along the northern shore of the bay to Point Bonita, and three miles into the Pacific Ocean, to the northwestern corner of San Francisco, as established in Section 3950; thence northwesterly by ocean shore to the place of beginning.

County seat—San Rafael.

NOTE.—Stats. 1851, p. 177; 1854, p. 121; 1860, p. 269; 1861, p. 351; 1868, p. 347. The Act of 1868 leaves a small strip between Marin and San Francisco out of both and all counties. See, however, Secs. 3950, 3953, 3954, and note to Sec. 3953.

#### NAPA.

3958. Beginning at southwestern corner, at a point Napa. in Huichica Creek where the said creek empties into San Pablo Bay; thence east to the mountains dividing Napa Valley from Suisun Valley, forming southeastern corner; thence northerly along the summit line of said mountains to its intersection with the First Standard North, Mount Diablo base, marked by a rock monument erected by Ralph Norris; thence east along said standard line seven and three-fourth miles to Vaca Mountains, which divide the Vaca and Suisun Valleys; thence northerly along the main ridge of said Vaca Mountains to Putah Creek, at a point called the Devil's Gate; thence northerly across said creek to and along the mountains dividing Berryessa Valley from Sacramento Valley to the southeast corner of Lake County on the western line of Yolo; thence westerly along the southern line of Lake, as established in Section 3917, to its intersection with the eastern line of Sonoma; thence southeasterly on said line of Sonoma to the western branch of the headwaters of the Huichica Creek; thence westerly to the main ridge that divides the Huichica Valley from the

Sonoma Valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo Bay; thence southerly to the center of the Huichica Creek; thence down said creek to its mouth, the place of beginning.

County seat—Napa City.

NOTE.—Stats. 1851, p. 178; 1852, p. 192; 1855, p. 77; 1851, p. 560. No attempt was made to materially change the boundaries of any of the counties, but simply to render the lines more definite and certain. Changes should only follow urgent necessity. Nothing can produce greater confusion than frequent changes of the law in matters of territorial jurisdiction, and it is hoped that future legislation may be directed to necessary changes only. Except in cases of ancient or long established lines, reputation is not proof of boundary, and when it is received it must have arisen from deceased persons of experience and full knowledge who have declared the lines.—*Lay vs. Neville*, 25 Cal., p. 545. The first Act following was passed *prior* to the Act putting this Title into effect, which was passed March 16th, 1872; it is given, however, for convenience.

Stats. 1871-2, p. 805.

*An Act to define the northern boundary line of Napa County, adjoining Lake and Yolo Counties.*

[Approved March 8, 1872.]

[Enacting clause.]

SECTION 1. The northern boundary line of Napa and the southeasterly boundary line of Lake Counties shall commence at the highest point of the Mount St. Helena; thence running in an easterly direction along the present boundary line between said counties to the Buttes Cañon Road; thence northeasterly in a direct line to the junction of Jericho and Putah Creeks; thence up Jericho Creek to the junction of Hunting Creek, in Jericho Valley; thence up Hunting Creek to a large pile of rocks on the southeasterly side of the county road, at the lower and most easterly end of Hunting Valley; thence in a straight line in the direction of the intersection of Bear and Cache Creeks to the county line of Yolo County; thence along the line of Yolo County in a southeasterly direction to the present county line dividing Yolo and Napa Counties.

SEC. 2. The Board of Supervisors of Napa County



shall order paid the claim of Lake County for the sum of thirty-five hundred dollars, and the Auditor of said County of Napa shall draw a warrant for the same on the Treasurer of the said county, payable from the General Fund, and the Treasurer of Napa County shall pay the same.

SEC. 3. All Acts or parts of Acts in conflict with this Act are hereby repealed.

SEC. 4. This Act shall take effect from and after its passage.

Stats. 1871-2, p. 484.

*An Act to create the County of Ventura, to establish the boundaries thereof, and to provide for its organization.*

[Approved March 22, 1872.]

[Enacting clause.]

SECTION 1. There shall be formed out of the eastern part of Santa Barbara County a new county, to be called Ventura.

SEC. 2. The boundaries of Ventura County shall be as follows: Commencing on the coast of the Pacific Ocean, at the mouth of the Rincon Creek; thence following up the center of said creek to its source; thence due north to the northern boundary line of Santa Barbara County; thence in an easterly direction along the said boundary line of Santa Barbara County to the northeast corner of the same; thence southerly along the line between the said Santa Barbara County and Los Angeles County to the Pacific Ocean and three miles therein; thence in a northwesterly direction to a point due south of and three miles distant from the center of the mouth of Rincon Creek; thence north to the point of beginning, and including the Islands of Anacapa and San Nicholas.

SEC. 3. The seat of justice shall be at the Town of San Buenaventura until otherwise provided by law.

SEC. 4. The Governor of this State shall, when this Act takes effect, appoint some suitable person, resident of Ventura County, to act as County Judge of said county, whose term of office shall continue until the first day of January, one thousand eight hundred and seventy-four, and until his successor is elected and qualified, and who shall hold his office and reside at the county seat. There shall be chosen by the qualified electors thereof at the judicial election to be holden in the year eighteen hundred and seventy-three, and every four years thereafter, a County Judge for Ventura County, whose term of office shall commence on the

first Monday of January succeeding his election, and continue for the term of four years. Said County Judge of Ventura County shall receive a salary of one thousand dollars per annum, to be paid quarterly. Said County Judge shall hold the Courts required by law to be held by County Judges. There shall be three regular terms of the County Court held in each year, said terms to commence on the first Monday in February, June, and October; *provided*, however, the County Judge may call and hold special terms of the Probate Court whenever public necessity may require. Said County Judge shall discharge all the duties required by law of County Judges in this State.

SEC. 5. There shall be an election held in the County of Ventura within sixty days from the time of the first meeting of the Commissioners. There shall be chosen at said election, by the qualified electors of said county, one District Attorney; one County Clerk, who shall be ex officio Auditor, Recorder, and Clerk of the Board of Supervisors, and ex officio Clerk of the County, Probate, and District Courts; one County Superintendent of Public Schools; one Sheriff, who shall be ex officio County Tax Collector; one County Assessor; one County Treasurer; one County Surveyor; one County Coroner, who shall be ex officio Public Administrator. Said county officers shall hold their respective offices until the first Monday in March, A. D. eighteen hundred and seventy-four, and until their successors are elected and qualified. There shall be chosen at said election, by the qualified electors thereof, one Supervisor for each Supervisor district in said county, who shall hold their offices as follows: District Number One, until the first day of January, A. D. eighteen hundred and seventy-three; District Number Two, until the first day of January, A. D. eighteen hundred and seventy-four; and District Number Three, until the first day of January, A. D. eighteen hundred and seventy-five; *provided*, that all Supervisors duly elected and qualified Supervisors of Santa Barbara County, residents of Ventura County, shall hold their office for the term provided by law, upon having duly qualified as township officers of Ventura County. There shall be chosen at said election, by the qualified electors thereof, two Constables and two Justices of the Peace for each township; *provided*, however, that all Constables and Justices elected at the general and judicial elections held in the year A. D. eighteen hundred and seventy-one, residents of Ventura County, shall hold their offices for the time provided by law, upon having

duly qualified as township officers of Ventura County for the respective townships in which they reside, as said townships are organized by the action of the Board of Commissioners provided for by this Act. The term of office of the Justice of the Peace and Constables of Ventura County shall be the same as in other counties in this State.

SEC. 6. The Governor shall, when this Act takes effect, appoint five persons, residents of the proposed county, who shall be and constitute a Board of Commissioners to perfect the organization of the said County of Ventura, a majority of whom shall constitute a quorum. Said Commissioners shall meet in the Town of San Buenaventura within twenty days after their appointment, and after being duly sworn to faithfully discharge their duties as prescribed by this Act, shall organize by electing from their number a President and Clerk. They shall then divide said county into three townships, define their boundaries, and designate the name of each. They shall also divide said county, by townships, into three Supervisor districts, and number the same. They shall also establish election precincts, and appoint one Inspector and two Judges of Election for each precinct in said county. They shall give thirty days notice, by proclamation in some newspaper published in the county, or if there be no newspaper published in Ventura County, then said publication to be made in some newspaper published in the County of Santa Barbara, of the officers to be elected, the precincts established; and the officers of election of each shall also designate the boundaries of each district, with their names or numbers; also, bounds and number of each Supervisor district. Said Commissioners shall, on the second Monday after said election, meet at the county seat as a Board of Canvassers, and proceed to canvass the election returns. Said Commissioners, their President and Clerk, are hereby authorized and required to discharge the same duties as are now required by law of Boards of Supervisors and County Clerks in the counties in this State, so far as the same applies to holding elections, canvassing election returns, and issuing certificates of election. They shall keep a full record of all their proceedings, and file the same with the original election returns in the County Clerk's office, as soon as he shall have been qualified, and thereupon the powers and duties of said Commissioners shall cease and terminate.

SEC. 7. It shall be the duty of the Board of Supervisors of Ventura County, whose election is by this

Act provided for, to meet at the county seat on the first Monday of the month subsequent to their election and qualification, and elect the member from District Number One Chairman. They shall then allow such per diem and mileage to the Commissioners and officers of election as they may think proper and just; and such allowance shall be paid by a warrant drawn in favor of each by the proper officers. Said Board, or majority of them, shall then appoint two freeholders, residents of Ventura County, to act as a Board of Commissioners, whose duty it shall be to meet a like number of Commissioners, appointed by the Board of Supervisors of Santa Barbara County, at a time and place agreed upon. Such joint Commissioners shall then organize by appointing from their number a President and Secretary, and shall immediately proceed to determine the indebtedness of said county at the time when this Act takes effect. After ascertaining the total amount of indebtedness, they shall ascertain the total market value of the assets belonging to the county under consideration. They shall also ascertain the assessed value under the assessment of eighteen hundred and seventy-one of the property in the territory hereby set apart to form Ventura County. Then, after deducting the total value of assets from the total amount of indebtedness, so as to ascertain the actual indebtedness, the proportion due from the County of Ventura shall be ascertained as follows: As the total assessed value of property in the territory taken from Santa Barbara County to form Ventura County is to the total assessed value of said county, so shall be the proportion of the actual indebtedness of Ventura County to Santa Barbara County; and when so ascertained said Commissioners shall certify to their respective Boards of Supervisors such amount. The Board of Supervisors of Ventura County shall then cause to be issued the bonds of Ventura County, payable in five years from the organization of said county, to the County of Santa Barbara, for such sum as the Commissioners certify to be due, bearing the same rate of interest as the County of Santa Barbara is now paying on such debt. Said Board of Supervisors shall procure and provide a suitable place or places to be used as a Court House and Jail, and for the accommodation of the various county officers. They shall then, in accordance with the general laws governing Boards of Supervisors, levy State and county taxes; *provided*, that for the General Fund they shall have power to levy not exceeding eighty cents on each one hundred

dollars of taxable property in said county. They shall also levy a tax of ten cents upon each one hundred dollars of taxable property in said county, which shall be collected as other State and county taxes are collected; and when so collected the same shall be set apart pro rata as a Sinking Fund to liquidate the debt due from Ventura County to the County of Santa Barbara, affected by the creation of Ventura County; and when there shall be five hundred dollars or more placed to the credit of said County of Santa Barbara it shall be the duty of the Board of Supervisors of Ventura County to draw upon their own order such sum and purchase the warrants of said County of Santa Barbara; and upon presentation to the Treasurer of the County of Santa Barbara he shall surrender a like amount of Ventura County bonds; said bonds shall then be canceled and on their face countersigned by the Chairman of the Board of Supervisors and filed in the Clerk's office. Said Board of Supervisors shall exercise such other powers and duties as are conferred by the general laws on Boards of Supervisors in the counties of this State. The levy of taxes for the first year shall be as effective as if levied at the time provided in the general law.

SEC. 8. All civil actions, or proceedings in the nature of actions, whether original or upon appeal, civil or criminal, which shall be pending in the District Court, County Court, or Probate Court, in the County of Santa Barbara, at the time of the organization of Ventura County, in which the defendants are residents of Ventura County, shall be removed for trial and final determination to the proper Courts of Ventura County on motion of any party interested; *provided*, that all actions commenced for the collection of taxes and licenses shall not be removed from the Courts of Santa Barbara County; *provided*, further, that in all criminal causes, where the offense was committed within the present limits of Ventura County, upon the application of the District Attorney of Ventura County, said causes shall be removed to Ventura County.

SEC. 9. All residents or property holders of the County of Ventura, upon application to the County Recorder of the County of Santa Barbara, and upon the payment of the fees required by law, shall be entitled to receive a transcript of the record, duly attested, of any property situated in the County of Ventura, and recorded in his office; and upon presentation of said transcript to the County Recorder of Ventura County, and upon the payment of the fees required by law,

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the Assessor shall receive per annum the sum of hundred dollars; the District Attorney the sum of hundred dollars; the Superintendent of Public the sum of three hundred dollars. The fees of her officers shall be the same as is provided for Act to regulate fees of office, approved March A. D. 1870, for similar officers in the County of Barbara.

15. Ventura County shall be entitled to five Public, as provided for by law.

16. The Superintendent of Public Schools of County of Santa Barbara shall furnish the Superintendent of Public Schools of Ventura County a copy of the last census lists of the different school tracts in the territory set apart to form Ventura County, and shall draw his warrant on the Treasurer Santa Barbara County in favor of the Superintendent of Schools of Ventura County for all money that or may be due by apportionment, or otherwise, to different districts (school) of Ventura County.

17. All delinquent taxes due the County of Barbara at the time this Act takes effect, from persons or property in Ventura County, shall be and collected by the proper officers of Ventura and the Auditor of Santa Barbara County by such delinquent taxes and tax list in duplicate Collector and Auditor respectively of Ventura they shall be collected by the officers of in the same manner as delinquent in the other counties of the State.

Supervisors may issue Ventura County to exceed in the aggregate twenty ing interest not to exceed ten per ble in ten years from the date of pal and interest of said bonds in of the United States; and provide a cash fund to be first expenses of the county rs. After the issuance of created by the County of amount of money in the

Acts, so far as they is Act, are hereby

ect and be in force ary, 1873.

said County Recorder shall record the same, and said record shall have the full force and effect of the original record; *provided*, however, the Board of Supervisors of Ventura County shall, within two years, procure a suitable set of books, and make such arrangements as they may agree upon with the County Recorder of Santa Barbara County for transcribing therein all necessary records, properly certified; said records to have the same effect and force of the original records; *provided*, that the expense of such records shall not exceed the sum of four thousand dollars.

SEC. 10. The County of Ventura shall be attached to and form a part of the Third Senatorial District, and for judicial purposes, shall be attached to and form a part of the First Judicial District. The terms of the District Court shall be held in and for the County of Ventura on the first Monday of March, July, and November of each year.

SEC. 11. The county officers of Ventura County shall, except as otherwise provided by this Act, be elected at the same time as the county officers in other counties of this State, and shall hold their offices for the term fixed by law. They shall give bonds for the faithful discharge of their duties, to be approved by the County Judge, in the following sums: Sheriff, in the sum of six thousand dollars; as ex officio County Tax Collector, in the sum of fourteen thousand dollars; the County Clerk, and ex officio the Recorder and Auditor, in the sum of five thousand dollars; the Assessor, in the sum of five thousand dollars; the County Treasurer, in the sum of twenty thousand dollars; the County Surveyor, in the sum of two thousand dollars; the Coroner and ex officio Public Administrator, in the sum of five thousand dollars. The Supervisors of Ventura County shall provide for the election of their successors, whose term of office shall be three years.

SEC. 12. All officers provided for by this Act shall perform duties as required by the general laws of the State, unless otherwise provided by this Act.

SEC. 13. The Supervisors of Ventura County shall receive for their services four dollars per day, and twenty-five cents per mile for coming to the county seat; *provided*, that for the year A. D. 1873, and every year thereafter, the per diem and mileage of any one Supervisor shall not exceed the sum of two hundred dollars.

SEC. 14. The officers of Ventura County shall receive the following salaries and fees: The Treasurer shall receive per annum the sum of six hundred dol-



lars; the Assessor shall receive per annum the sum of six hundred dollars; the District Attorney the sum of five hundred dollars; the Superintendent of Public Schools the sum of three hundred dollars. The fees of all other officers shall be the same as is provided for in an Act to regulate fees of office, approved March 5th, A. D. 1870, for similar officers in the County of Santa Barbara.

SEC. 15. Ventura County shall be entitled to five Notaries Public, as provided for by law.

SEC. 16. The Superintendent of Public Schools of the County of Santa Barbara shall furnish the Superintendent of Public Schools of Ventura County a certified copy of the last census lists of the different school districts in the territory set apart to form Ventura County, and shall draw his warrant on the Treasurer of Santa Barbara County in favor of the Superintendent of Schools of Ventura County for all money that is or may be due by apportionment, or otherwise, to the different districts (school) of Ventura County.

SEC. 17. All delinquent taxes due the County of Santa Barbara at the time this Act takes effect, from the persons or property in Ventura County, shall be paid to and collected by the proper officers of Ventura County, and the Auditor of Santa Barbara County shall certify such delinquent taxes and tax list in duplicate to the Collector and Auditor respectively of Ventura County; they shall be collected by the officers of Ventura County in the same manner as delinquent taxes are collected in the other counties of the State.

SEC. 18. The Supervisors may issue Ventura County bonds in a sum not to exceed in the aggregate twenty thousand dollars, bearing interest not to exceed ten per cent per annum, payable in ten years from the date of their issuance; the principal and interest of said bonds to be paid in the gold coin of the United States; and may negotiate the same to provide a cash fund to be used in the payment of the first expenses of the county and the salaries of its officers. After the issuance of said bonds, no debt shall be created by the County of Ventura in excess of the amount of money in the Treasury of said county.

SEC. 19. All Acts and parts of Acts, so far as they conflict with the provisions of this Act, are hereby repealed.

SEC. 20. This Act shall take effect and be in force from and after the first day of January, 1873.

## CHAPTER II.

## GENERAL PROVISIONS RELATING TO COUNTIES.

SECTION 3969. Disputed boundaries, how settled.

3970. Report to Surveyor General on disagreement of Supervisors.

3971. Surveyor General to determine boundary.

3972. Approved surveys to be conclusive.

3973. Surveys heretofore made declared approved and valid.

3974. Cost of survey to be apportioned equally among counties interested.

3975. Which county owns real property when county is divided.

3976. Petition for change of county seat.

3977. Supervisors to order election.

3978. Notice of election, etc.

3979. Election, how held and conducted.

3980. Voter to vote for place he prefers.

3981. Notice of result.

3982. Place chosen to be county seat.

3983. Statement of result.

3984. No second election to be held within one year.

3985. Subsequent removal of county seat.

Disputed boundaries, how settled.

3969. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the Boards of Supervisors of such counties, or by a survey made by the Surveyor General, on application of the Board of Supervisors of any county affected thereby.

NOTE.—The Probate Court of the county in which the decedent lived at the time of his death retains jurisdiction of the estate, though the place fall into a new county erected thereafter.—Est. of Harlan, 24 Cal., p. 182. Parol evidence existing in reputation of a boundary is evidence when and in what case.—See Lay vs. Neville, 25 Cal., p. 545.

Report to Surveyor General on disagreement of Supervisors

3970. If the first mode is adopted, and the Board of Supervisors do not agree upon and finally approve the survey, each Surveyor must make a report to the

Surveyor General, with surveys, maps, notes, and explanations touching disputed points.

3971. Upon such reports the Surveyor General must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys establish such common boundaries and corners.

Surveyor General to determine boundary.

3972. All surveys finally approved under the provisions of this Chapter are conclusive ascertainment of lines and corners included therein.

Approved surveys to be conclusive.

3973. All surveys and maps of boundary lines heretofore legally made and approved are declared valid, and they are primary evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this Code.

Surveys heretofore made declared approved and valid.

3974. The cost of making such surveys must be apportioned equally among the counties interested, and the Board of Supervisors must audit the same, and the amounts must be paid out of the General County Fund.

Cost of survey to be apportioned equally among counties interested.

3975. When a county is divided or the boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.

Which county owns real property when county is divided.

NOTE.—For equitable claims of one county against another existing after changes of boundary in erecting a new county, and other questions pertaining to indebtedness and liability of one to the other in such cases, see *People vs. Alameda Co.*, 28 Cal., p. 641; *Beals vs. Amador Co. Sup.*, 28 Cal., p. 449.

3976. Whenever the inhabitants of any county of this State desire to remove the county seat of the

Petition for change of county seat.

county from the place where it is fixed by law or otherwise, they may present a petition to the Board of Supervisors of their county, praying such removal, and that an election be held to determine to what place such removal must be made.

NOTE.—Stats. 1850, p. 199, Secs. 1, 2; 1854, p. 198.

Supervisors  
to order  
election.

3977. If the petition is signed by qualified electors of the county equal in number to at least one third of all the votes cast in the county at the last preceding general election, the Board must, within five days after receiving such petition, order an election, naming the day on which it must be held, not more than sixty nor less than thirty-five days from the time of calling it, specifying its object.

NOTE.—Stats. 1850, p. 199, Secs. 1, 2; 1855, p. 4. If the county seat has been once removed under *these provisions*, or under the *Act* which the Codes here *extends*, then a removal can be had again *only* as provided in Sec. 3985, post; but if such removal has been had by any *other authority*, or in any other manner than provided in this Chapter or in the statute which it *continues*, then any removal under this Code is the original or first removal as contradistinguished from that indicated by the terms "once removed" in Sec. 3985; for the term "once removed" is qualified by the words "in the manner prescribed by this Chapter" following; hence any removal asked to be made under Sec. 3985, is so asked because a previous removal was had under the *Code* or under the *Act* which by it is continued. Sec. 5, ante, Vol. I of this Code provides that the Code "continues" all existing statutes, which are substantially the same as the Code provisions. The power of the Legislature to authorize a popular vote to locate a county seat is sustained in *Upham vs. Sup. of Sutter County*, 8 Cal., p. 378; see, also, *Dickey vs. Hurlburt et al.*, 5 Cal., p. 344.

Notice of  
election,  
etc.

3978. Notice of not less than twenty-five days must be given of the election, by publication in some newspaper, if there is one published in the county, and by posting notices thereof in at least five public places in the county.

NOTE.—Stats. 1850, p. 199, Sec. 3.

3979. The election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to elections for county officers.

Election, how held and conducted.

3980. In voting on the question, each elector must vote for the place in the county which he prefers as the seat of justice, plainly designating it in his ballot.

Voter to vote for place he prefers.

NOTE.—Stats. 1850, p. 199, Sec. 4.

3981. When the returns have been received and compared, and the result ascertained by the Board, if a majority of all the votes cast are in favor of any particular place, the Board must give notice of the result by publication in some newspaper, if there is one printed in the county, if not, then by causing notices thereof to be posted in not less than five public places.

Notice of result.

NOTE.—Stats. 1850, p. 199, Sec. 5.

3982. In the notice provided for in Section 3981, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice the place chosen is the county seat of the county.

Place chosen to be county seat.

NOTE.—Stats. 1850, p. 199, Sec. 6; 1854, p. 198.

3983. Whenever any election has been held as provided for in the preceding sections of this Chapter, the statement made by the Board of Supervisors, showing the result thereof, must be deposited in the office of the County Clerk, and whenever the Board gives the notice prescribed by Section 3982 they must transmit a certified copy thereof to the Secretary of State.

Statement of result.

NOTE.—Stats. 1850, p. 199, Sec. 8.

3984. When the election has been held and a majority of the votes are cast for some other place than that fixed by law as the former county seat no

No second election to be held within one year.

**Same.** such personal property as may be necessary to the exercise of its powers;

4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;

5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by this Code or by special statutes.

**NOTE.**—A corporation can do nothing except that which it is expressly authorized by law to do, or absolutely and appropriately necessary for the conduct of the business authorized to be conducted.—*Vandall vs. So. S. F. W. and Dock Co.*, 40 Cal., p. 83; see *Civ. Code Cal.*, Vol. I, Secs. 354-360, and notes; see *Code Civil Procedure Cal.*, Title VII, Part III, "Eminent Domain," and note; *Huffman vs. San Joaquin Co.*, 21 Cal., p. 426. See Sec. 2732, ante, "Responsible for keeping bridges in repair." The county acts through its Board of Supervisors.

**Limitation on powers; loaning credit.**

4004. No county must in any manner loan or give its credit to or in aid of any person unless it is expressly authorized by law so to do.

**NOTE.**—*Const.*, Art. XI, Sec. 10, and Art. IV, Sec. 37.

**Same; temporary loans.**

4005. No money must be borrowed on a temporary loan by any county except in anticipation of the taxes of the current fiscal year, and the same must always be made payable within eight months from the time of making the loan.

**Classification of counties.**

4006. For purposes other than for roads and highways the counties of this State are classified as follows:

1. Those containing twenty thousand inhabitants or over constitute the first class;
2. Those containing eight thousand and under twenty thousand inhabitants constitute the second class; and,
3. Those containing less than eight thousand inhabitants constitute the third class.

NOTE.—Under the Federal census for the year 1870 the counties of this State are classified as follows: First class—Alameda, Sacramento, San Joaquin, and Santa Clara—4; Second class—Amador, Butte, Calaveras, Contra Costa, El Dorado, Los Angeles, Monterey, Nevada, Placer, Santa Cruz, Solano, Sonoma, Tuolumne, Yolo, and Yuba—15; Third class—Alpine, Colusa, Del Norte, Fresno, Humboldt, Inyo, Kern, Klamath, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Mono, Napa, Plumas, San Bernardino, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Shasta, Sierra, Sutter, Siskiyou, Stanislaus, Tehama, Trinity, and Tulare—30. San Francisco, having a local government, is not placed in either class. The new county of Ventura goes into the third class.

**4007.** Whenever a new census is taken, the counties, on the first day of July next thereafter, are, by operation of law, classified under such census. Same.

NOTE.—Many Acts of a local and special character relating to Boards of Supervisors, are to be found in the Statutes of 1871-2 by reference to the index thereof; they are not more fully referred to here, because they are not of a general character.

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## CHAPTER II.

### THE BOARD OF SUPERVISORS.

#### ARTICLE I. ORGANIZATION AND TERMS OF BOARD.

##### II. GENERAL PERMANENT POWERS.

##### III. OTHER POWERS AND RESTRICTIONS.

NOTE.—The powers conferred upon Boards of Supervisors are not as broad as a glance at these provisions would indicate. Their power over roads, wharves, chutes, piers, gas, etc., are limited by the Titles of the Political Code relative to those subjects.

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#### ARTICLE I.

##### ORGANIZATION AND TERMS OF THE BOARD.

**SECTION 4022.** Board, how many to compose.

**4023.** Qualifications.

**4024.** Term of office.

**SECTION 4025.** When number increased or decreased, what Board must do.

- 4026. Vacancy in Board, how filled.
- 4027. Members, how classified for election.
- 4028. Chairman, permanent and temporary.
- 4029. Clerk, who is, and his compensation.
- 4030. Duties of Clerk.
- 4031. Books to be kept by the Board.
- 4032. Regular meetings fixed.
- 4033. Other regular meetings may be fixed.
- 4034. Special meetings, how called.
- 4035. Meetings and records public.

Board, how many to compose.

**4022.** Each county must have a Board of Supervisors, consisting:

1. In counties of the first class, of seven members;
2. In counties of the second class, of five members;
3. In counties of the third class, of three members.

**NOTE.**—See notes to Secs. 4000–4003. In *Waugh vs. Chauncey*, 13 Cal., p. 12, it was said by the Court that “the Board of Supervisors is a special tribunal, with mixed powers—administrative, legislative, and judicial—and jurisdiction over roads, ferries, and bridges is given it by the statute.” What is here said with special reference is true generally.

Qualifications.

**4023.** Each member of a Board of Supervisors must be an elector of the district he represents.

Term of office.

**4024.** The term of office of a Supervisor is three years.

**NOTE.**—One who is not a Supervisor, but acts in the capacity of one, cannot be enjoined.—*Trinity County vs. McCummon*, 25 Cal., p. 117.

When number increased or decreased, what Board must do.

**4025.** If, under the classification, the number of Supervisors of any county is either increased or diminished, the Board of Supervisors must re-district the county into Supervisor districts, as nearly equal in population as may be, to correspond with the number of Supervisors to which it is, under the new classification, entitled. If the number is increased, at the first general election thereafter Supervisors must be elected for such new districts in which no Supervisors then act-



ing reside; and if the number is decreased, no successors must be elected for Supervisors whose terms expire until the number is decreased to that to which the county is entitled.

NOTE.—Stats. 1855, p. 51, Sec. 2.

4026. Whenever a vacancy occurs in the Board of Supervisors, from a failure to elect or otherwise, the County Judge must fill the vacancy by appointing for the unexpired term some qualified elector of the district in which the vacancy occurs.

Vacancy in Board, how filled.

4027. The members of the Board of Supervisors must be by themselves so classified that a number as nearly equal as may be must be elected each year; the member longest in commission is the Chairman of the Board; and when two or more commissions expire at the same time, the Board must elect a Chairman from those holding the oldest commissions. A Supervisor appointed to fill a vacancy is not the holder of the oldest commission, under this section, unless all the Supervisors are similarly situated.

Members, how classified for election.

NOTE.—Stats. 1855, p. 52, Sec. 6; 1857, p. 153, Sec. 2; 1858, p. 337, Sec. 6.

4028. The Chairman must preside at all meetings of the Board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as Chairman temporarily. Any member of the Board may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties.

Chairman, permanent and temporary.

NOTE.—Rev. Stats. Iowa, p. 49, Sec. 308.

4029. The Clerk of the county is ex officio Clerk of the Board of Supervisors. The records must be signed by the Chairman and the Clerk. The Clerk must be paid such compensation as is provided by law, in full for all services as Clerk of the Board.

Clerk, who is, and his compensation.

NOTE.—Stats. 1855, p. 52, Secs. 6, 7.

Duties of  
Clerk.

4030. The Clerk of the Board must:

1. Record all the proceedings of the Board;
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county;
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
4. Sign all orders made and warrants issued by order of the Board for the payment of money, and when he is not also the County Auditor, certify the same to that officer;
5. Record the reports of the County Treasurer of the receipts and disbursements of the county;
6. Preserve and file all accounts acted upon by the Board;
7. Preserve and file all petitions and applications for franchises, and record the action of the Board thereon;
8. Record all orders levying taxes; and,
9. Perform all other duties required by law or any rule or order of the Board.

NOTE.—Rev. Stats. Iowa, 1860, p. 52, Sec. 319; Stats. 1855, p. 52, Sec. 6.

Books to be  
kept by the  
Board.

4031. The Board must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.
2. An "Allowance Book," in which must be recorded all orders for the allowance of money from the County Treasury, to whom made, and on what account, dating, numbering, and indexing the same through each year.
3. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads, road districts, and Overseers thereof, their reports and accounts.

4. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required. Same.

5. A "Warrant Book," to be kept by the County Auditor, in which must be entered, in the order of drawing, all warrants drawn on the Treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

NOTE.—Rev. Stats. Iowa, 1860, p. 52, Sec. 318.

4032. The regular meetings of the Boards of Supervisors must be held at their respective county seats on the first Mondays in May, August, November, and February of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and other purposes, as are prescribed in this Code or provided for by the Board. Regular meetings fixed.

NOTE.—Stats. 1861, p. 511, Sec. 1; 1867-8, p. 541, Sec 1.

4033. In the counties of the first and second classes additional regular meetings, not exceeding two in each year, may be provided for, fixed, and held for the transaction of business by an order duly entered of record, in which must be specified the character of business to be transacted at such additional regular meetings, and none other than that specified must be transacted. Notice of the order fixing such additional meetings must be published for four weeks, in a paper published in the county, before the ordinance is effective. Other regular meetings may be fixed.

4034. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the Board, a special meeting may be Special meetings, how called.

ordered by a majority of the Board. The order must be entered of record, and five days notice thereof must, by the Clerk, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

NOTE.—Stats. 1855, p. 52, Sec. 5.

Meetings  
and records  
public.

4035. All meetings of the Board must be public, and the books, records, and accounts must be kept at the office of the Clerk, open at all times for public inspection free of charge.

NOTE.—Stats. 1855, p. 52, Secs. 6-8.

## ARTICLE II.

### GENERAL PERMANENT POWERS.

#### SECTION 4046. General permanent powers.

1. To supervise official conduct of county officers.
2. To district county.
3. To create election precincts.
4. Roads, bridges, etc.
5. Indigent sick.
6. To provide county farm.
7. To provide rooms for county purposes.
8. Acquire property for the county.
9. Provide county buildings.
10. May sell county property.
11. Audit accounts of officers.
12. Allow accounts.
13. Levy tax for current expenses.
14. Board of Equalization.
15. To direct legal proceedings.
16. To insure property.
17. To grant franchises.
18. Fix compensation of officers.
19. To fill vacancies.
20. To ordain health regulations.
21. To contract for printing.
22. To publish proceedings.
23. May ordain certain regulations.
24. May ordain rules to govern Board.
25. May provide a seal.
26. May do all other acts required or necessary.

**4046.** The Boards of Supervisors, in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law:

General permanent powers.

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe keeping, management, or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

To supervise official conduct of county officers.

NOTE.—Stats. 1855, p. 54, Sec. 11.

2. To divide the counties into townships, school, road, and other districts required by law, change the same and create others, as convenience requires.

To district county.

3. To establish, abolish, and change election precincts, and to appoint Inspectors and Judges of Elections, canvass all election returns, declare the result, and issue certificates thereof.

To create election precincts.

4. To lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law.

Roads, bridges, etc.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer, and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding three dollars, and an ad valorem tax not exceeding one fifth of one per cent, or either of such levies, when both are not required, on all taxpayers and taxable property of the county.

Indigent sick.

6. To provide a farm in connection with the County Hospital, and make regulations for working the same.

To provide county farm.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes.

To provide rooms for county purposes.

Acquire property for the county.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by them for that purpose, and no more than the appraised value must be paid therefor.

Provide county buildings.

9. To cause to be erected and furnished a Court House, Jail, Hospital, and such other public buildings as may be necessary.

May sell county property.

10. To sell at public auction at the Court House door, after thirty days previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the County Treasury for the use of the county.

Audit accounts of officers.

11. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

Allow accounts.

12. To examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the County Treasurer therefor, and provide for the issuing of the same.

Levy tax for current expenses.

13. To levy such tax annually on the taxable property of the county as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding one dollar on every one hundred dollars of value for any one year; and to levy such taxes as are required to be levied by special or local statutes.

Board of Equalization.

14. To equalize the assessments.

To direct legal proceedings.

15. To direct and control the prosecution and defense of all suits to which the county is a party.

16. To insure the county buildings in the name of and for the benefit of the county. To insure property.
17. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges, ferries, wharves, chutes, and piers. To grant franchises.
18. To fix the compensation of all county officers not otherwise in this Code or by general or special law fixed, and provide for the payment of the same. Fix compensation of officers.
19. To fill by appointment all vacancies that may occur in county or township offices, except those of County Judge and Supervisor. To fill vacancies.
20. To adapt to the county the provisions in this Code, for the preservation of the health of San Francisco or Sacramento, for such limited time as they may deem proper, and to provide for the expenses thereof. To ordain health regulations.
21. To contract for the county printing, and provide books and stationery for county officers. To contract for printing.
22. At the adjournment of each session of the Board to cause to be published in a newspaper or otherwise a fair statement of all their proceedings, and semi-annually a statement of the financial condition of the county. To publish proceedings.
23. To make regulations for the destruction of gophers, squirrels, other wild animals, and noxious weeds, and to levy a special tax of not exceeding three cents on each one hundred dollars of taxable property, wherewith to pay rewards therefor. To make regulations for the protection of game, fish, and shellfish, and for the prevention of injuries to sheep by dogs, and to tax dogs, and direct the application of the tax. When such regulations are made as provided in this section relating to game and fish, the laws of the State for the protection thereof are suspended in such county. May ordain certain regulations.

NOTE.—Stats. 1870, p. 316.

May ordain  
rules to  
govern  
Board.

24. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business, as may be necessary.

May pro-  
vide a seal.

25. To adopt a seal for their Board, a description and impression whereof must be filed by their Clerk in the offices of the County Clerk and Secretary of State.

May do all  
other acts  
required or  
necessary.

26. To do and perform all other acts and things required by law not in this Title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

NOTE.—In *People vs. El Dorado County*, 8 Cal., p. 58, Boards of Supervisors are held to have *jurisdiction*, and to exercise powers, as a body *executive*, *legislative*, and *judicial*, over the fiscal and police matters of the county. As to the exercise of its varied and mixed powers, and the effect of its orders and judgments, see *Waugh vs. Chauncey*, 13 Cal., p. 11; *Finch vs. Tehama Co.*, 29 Cal., p. 453. Exercising powers formerly exercised by Court of Sessions.—*People vs. Bircham*, 12 Cal., p. 50. *Claims against county*.—*El Dorado Co. vs. Elstner*, 18 Cal., p. 144; *People vs. Sup. El Dorado Co.*, 11 Cal., p. 171. The law alone authorizes the creation of a debt against a county.—*Foster vs. Coleman*, 10 Cal., p. 278. No authority to *set apart* revenue for *current expenses*.—*Laforge vs. Magee*, 6 Cal., p. 285. Highways.—*Binkett vs. San Joaquin Sup.*, 18 Cal., p. 702. Settlement with County Treasurer.—*El Dorado Co. vs. Reed*, 11 Cal., p. 181. Election precincts.—*People vs. Sup. Marin Co.*, 10 Cal., p. 344. Power over offices and official bonds.—*Id. Franchises*.—See *Ferry and Bridge*, ante; *Henshaw vs. Butte Co. Sup.*, 19 Cal., p. 150; *Fall vs. Paine*, 23 Cal., p. 302. *Municipal legislation*.—*Shrader, ex parte*, 33 Cal., p. 279; *People vs. S. F. Sup.*, 27 Cal., p. 625; *Creighton vs. Mason*, 27 Cal., p. 613. *As Board of Equalization*.—See Title "Revenue," Secs. 3672-3682, ante, and notes. Consolidate offices.—See Sec. 4106, post. Appointment to office is filling a vacancy.—*Conger vs. Gilmer*, 32 Cal., p. 75.



## ARTICLE III.

## OTHER POWERS AND RESTRICTIONS.

- SECTION 4064. Provide appliances for holding elections.
4065. Certificates issued, as Board of Canvassers.
4066. Appointments must be made on petition.
4067. Power to require attendance of witnesses.
4068. Examination of witnesses.
4069. Officers and witnesses not to be prepaid.
4070. When Board must not allow claims or contract debts.
4071. Who may oppose claims against county.
4072. Account, how made and prosecuted.
4073. Account must be filed prior to session.
4074. What claims to be rejected. Proceedings on part allowance.
4075. Claimant may sue, when, and when recover costs.
4076. What warrants must specify. How presented and paid.
4077. In what transactions Supervisors not to be interested.
4078. Transfer of application, in what cases made.
4079. Notices, how given.
4080. Provide for cultivating shade and ornamental trees.
4081. Require Assessors to report statistics.
4082. Claims in favor of Supervisors.
4083. Annual statement, when made and what to contain.
4084. Receive and apply donations of land, etc., to specific purposes.
4085. Improve streams not navigable.
4086. What may be recovered on bond.
4087. Chapter does not apply to San Francisco.

4064. The Board must provide all poll lists, poll books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

Provide appliances for holding elections.

NOTE.—Stats. 1865-6, p. 511, Sec. 7. For other duties see Title "Of Elections," Secs. 1055, 1056, 1127-1131, 1278, 1297, ante; Title "State Militia," Sec. 1899, et alia, ante; Title "Revenue," Secs. 3672-3682; Title "Highways," Articles I to VIII, Chap. IV; Articles I, II, III, "Toll Roads," Chap. V; "Public Ferries and Toll Bridges," Secs. 2842, et seq., Chap. VI; "Wharves, Chutes, and Piers," Sec. 2906, et seq.;

"Health," Secs. 2059, 2063, ante; Title VIII, "Public Lands," Chap. I, Secs. 3446-3487, et alia, and elsewhere in this Code, under appropriate heads.

Certificates  
issued by  
Board of  
Canvassers

4065. Whenever, as canvassers, the Board of Supervisors have declared the result of an election held in the county, certificates must be by their Clerk issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the Title relative to "Elections."

NOTE.—Stats. 1861, p. 511, Sec. 2. See Secs. 1283, 1284, 1285, ante.

Appoint-  
ments must  
be made on  
petition.

4066. No appointment to fill a vacancy in office must be made by the Board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the township or district, if for a township or district office.

NOTE.—Stats. 1863, p. 26, Sec. 1.

Power to  
require at-  
tendance of  
witnesses

4067. The Board may, by their Chairman or the Chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction.

Examina-  
tion of  
witnesses.

4068. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a Court of justice. Disobedience to the subpoena, or to an order to attend, or to testify, may be enforced by the Board, and for that purpose the Board has all the powers conferred by, and the witness is subject to all the provisions of, Chapter II, Title III, Part IV, of THE CODE OF CIVIL PROCEDURE.

4069. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to mat-

ters of public concern before the Board of Supervisors are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The Board must allow them reasonable compensation for services and attendance.

Officers and witnesses not to be prepaid.

4070. The Board must not for any purpose contract debts or liabilities, except in pursuance of law, or under ordinances of their own, adopted in accordance with the powers herein conferred; and whenever debts and liabilities have been created which, added to the salaries of county officers and other estimated liabilities fixed by law for the remainder of the year, equal in the aggregate the revenue of the county for current expenses, no further allowance of any accounts must be made.

When Board must not allow claims or contract debts.

NOTE.—Stats. 1855, p. 54, Sec. 16.

4071. Any citizen and taxpayer of the county in which he resides may appear before the Board and oppose the allowance of any claim or demand made against the county.

Who may oppose claims against county.

NOTE.—Stats. 1855, p. 55, Sec. 21.

4072. The Board of Supervisors must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the Board within a year after the last item of the account accrued.

Account, how made and prosecuted.

NOTE.—Stats. 1865-6, p. 836, Sec. 1, modified.

4073. No account must be necessarily passed upon by the Board unless made out as prescribed in the preceding section and filed by the Clerk at least one day prior to the session at which it is asked to be heard.

Account must be filed prior to session.

NOTE.—Stats. 1865-6, p. 836, Sec. 1, modified.

What claims to be rejected; proceedings on part allowance.

4074. When the Board finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the Board may allow the claim in part, and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment the claim may be again considered at the next regular succeeding session of the Board, but not afterwards.

NOTE.—Stats. 1865-6, p. 836, Sec. 1, modified.

Claimant may sue, when, and when recover costs.

4075. A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the Board, but not afterward; and if in such action judgment is recovered for more than the Board allowed, on presentation of the judgment the Board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the Board allowed, the Board must pay the claimant no more than was originally allowed.

NOTE.—Stats. 1865-6, p. 836, Sec. 1, modified.

What warrants must specify; how presented and paid.

4076. Warrants drawn by order of the Supervisors on the County Treasury for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the Treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

NOTE.—Stats. 1855, p. 54, Sec. 14.

In what transactions Supervisors not to be interested.

4077. No member of the Board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale

of property belonging to the county, nor in any contract made by the Board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

NOTE.—Stats. 1855, p. 55, Sec. 22. See Secs. 920, 926, ante, and notes, and Sec. 176, Penal Code Cal.

4078. Whenever an application is made to the Board for an order, franchise, or license, relating to any toll road, bridge, ferry, wharf, chute, pier, or other subject over which the Board has jurisdiction, in which a majority of the Board are not disinterested, the application, by order of the Board, must be transferred to the Board of Supervisors of an adjoining county; the Clerk of the Board must thereupon certify the application and all orders and papers relating thereto to the Board to which the transfer is ordered; and thereafter the Board to which the same is certified has full jurisdiction to hear and determine the application. In the cases mentioned in this Code wherein the County Judge may act for an interested Supervisor, no transfer of the application need be made unless the Judge is also interested.

Transfer of application, in what cases made.

NOTE.—Stats. 1857, p. 322, Sec. 1. When but one Supervisor is interested, the County Judge may act.— See Sec. 2852, ante; see, also, Titles I and V, Div. I, Civil Code Cal.; see Secs. 2778-2831, ante, "Toll Roads;" Secs. 2842-2859, ante, "Public Ferries and Toll Bridges;" generally, Secs. 2870-2881, ante, "Toll Bridges;" Secs. 2892-2896, ante, "Toll Ferries;" Secs. 2906-2920, ante, "Wharves, Chutes, and Piers;" see, also, Subd. 17, Sec. 4046, ante; also, for granting right of way, etc., for street railroads, Civ. Code Cal., Secs. 509, 512; wagon roads, id., Sec. 513; bridge, ferry, wharf, etc., id., Secs. 528-531.

4079. All public notices of proceedings of or to be had before the Board, not otherwise specially provided for, must be published in a newspaper published in the county; if there is no such newspaper, then cop-

Notices, how given.

ies thereof must be posted at the Court House **door**, and at two other public places in the county.

NOTE.—Stats. 1855, p. 56, Sec. 23.

Provide for cultivating shade and ornamental trees.

4080. The Board, under such regulations as **they** may adopt, must encourage the planting and **preservation** of shade and ornamental trees on the **public roads** and highways, and on and about the **public grounds** and buildings of the county, and pay to persons **planting** and cultivating the same, for every living tree **thus** planted, at the age of four years, the sum of one **dollar**.

NOTE.—Stats. 1867-8, p. 670 (entire Act.)

Require Assessors to report statistics.

4081. The Board must require **Assessors** to **report** to the Surveyor General annually a true statement of the agricultural and industrial pursuits and **products** of the county, with such other statistical information **as** they may by ordinance direct, and enforce **obedience** of the Assessor thereto by deducting such **proportion** of his compensation as Assessor as to them may **seem** appropriate, for a failure to comply with the order.

NOTE.—Stats. 1865-6, p. 201, Secs. 1, 2.

Claims in favor of Supervisors.

4082. All claims against the county presented by members of the Board of Supervisors for per diem and mileage or other service rendered by them, must be verified as other claims, and must state that the **service** has been actually rendered.

Annual statement, when made and what to contain.

4083. The Board must have prepared by the Clerk, and when he is not also Auditor then by **that** officer, and under their direction, prior to their **annual** August meeting, a statement showing:

1. The indebtedness of the county, funded and floating, stating the amount of each class and the rate of interest borne by such indebtedness or any part thereof;

2. A concise description of **all** property owned by the county, with an approximate estimate of the value

thereof, and the amount of cash in the County Treasury and its several Funds.

NOTE.—Stats. 1867-8, p. 65, Sec. 1, modified.

4084. The Board must receive from the United States or other sources lands and other property granted or donated to the county for the purpose of aiding in the erection of county buildings, roads, bridges, or other specific purposes, and may use the same therefor, and may provide for the sale of the same and the application of the proceeds thereof.

Receive and apply donations of land, etc., to specific purposes.

NOTE.—Stats. 1867-8, p. 69, Sec. 1; also, Stats. 1870, p. 757; 1870, p. 763 (entire Acts).

4085. The Board may provide for widening, deepening, straightening, removing obstructions from, and otherwise improving, all streams within the county, for use as public highways for rafting and floating lumber, when such streams are not declared by law to be and are not in fact navigable for commercial purposes, and provide regulations for the use thereof; but no regulations of the Board, nor improvements directed, must in any manner interfere with the private rights or privileges of riparian owners, miners, or others.

Improve streams not navigable.

4086. Any Supervisor who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently, or corruptly attempts to perform an act, as Supervisor, unauthorized by law, in addition to the penalty provided in THE PENAL CODE, forfeits to the county five hundred dollars for every such act, to be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.

What may be recovered on bond.

NOTE.—Stats. Iowa, 1860, p. 50, Sec. 311.

Chapter  
does not  
apply to  
San  
Francisco.

4087. This Chapter does not apply to the City and County of San Francisco.

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## CHAPTER III.

### COUNTY OFFICERS.

#### ARTICLE I. GENERAL PROVISIONS.

- II. COUNTY JUDGE.
- III. COUNTY TREASURER.
- IV. SHERIFF.
- V. COUNTY CLERK.
- VI. COUNTY AUDITOR.
- VII. COUNTY RECORDER.
- VIII. DISTRICT ATTORNEY.
- IX. COUNTY SURVEYOR.
- X. CORONER.
- XI. ASSESSORS, TAX COLLECTORS, SCHOOL SUPERINTENDENT, PUBLIC ADMINISTRATOR, AND COMMISSIONER OF HIGHWAYS.
- XII. CONSTABLES, JUSTICES OF THE PEACE, AND INFERIOR OFFICERS.

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#### ARTICLE I.

##### GENERAL PROVISIONS.

- SECTION 4101. Age, citizenship, and residence, as to county officers.
- 4102. Same as to district and township officers.
- 4103. County officers enumerated.
- 4104. Township and other inferior officers.
- 4105. Offices united and consolidated.
- 4106. Consolidating offices by the Board.
- 4107. Omission to consolidate.
- 4108. Oath, bond, and fees of consolidated offices.
- 4109. County officers, when elected, and term of office.
- 4110. County Judges and Justices election, and term of office.
- 4111. Supervisors, when elected.
- 4112. May appoint deputies.
- 4113. Same.
- 4114. Official name of principal officer includes deputies.
- 4115. Vacancies, how filled.
- 4116. What offices to be kept at county seat.



SECTION 4117. Civil penalty for non-performance of duty attached to official bond.

4118. County officers may administer oaths.

4119. Certain officers must reside at county seat.

4120. Absence of county officers from State.

4121. Certain officers prohibited from practicing law.

4122. Official bonds classified, and amounts thereof.

4123. When amount of bond is not fixed by law.

4124. Other provisions relating to county officers.

4101. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the State, and an elector of the county in which the duties of the office are to be exercised.

Age, citizenship, and residence, as to county officers.

NOTE.—See note to Sec. 220, ante; see Secs. 841, 842, ante, and notes.

4102. No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the State, and an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

Same, as to district and township officers.

4103. The officers of a county are:

County officers enumerated.

A County Judge;

A Treasurer;

A County Clerk;

An Auditor;

A Sheriff;

A Tax Collector;

A District Attorney;

A Recorder;

An Assessor;

A Surveyor;

A School Superintendent;

A Coroner;

A Public Administrator;

A Board of Supervisors; and

—In counties of the first class, for highway purposes,  
a Commissioner of Highways.

NOTE.—See Sec. 220, ante, and note; also, Penal Code Cal., Secs. 65, 77. Forfeiture of office.—Id., Sec. 98; see index, id., Title "Officers," etc.; also id., "Office." Removal from office, etc., id., Secs. 758-772, and notes. See, also, Code Civil Pro. Cal., "Usurpation of office," Secs. 802-809, and notes.

Township  
and other  
inferior  
officers.

4104. The officers of townships are two Justices of the Peace, two Constables, and such other inferior and subordinate officers as are provided for elsewhere in this Code, or by the Board of Supervisors.

Offices  
united and  
consoli-  
dated.

4105. In all the counties of the third class:

1. The County Clerk shall be ex officio Auditor and Recorder;
2. The Sheriff shall be ex officio Tax Collector; and
3. The Coroner shall be ex officio Public Administrator.

NOTE.—In the case of *Merrill vs. Gorham*, 6 Cal., p. 43, Chief Justice Murray, speaking for the Court, said: "We can see no objection to his (the Sheriff's) exercising the duties of Collector, as they are of the same character as those of his office, and there is no constitutional inhibition. Indeed, motives of prudence and economy may often require the consolidation of different offices of the same character, and we would be reluctant to adopt a rule of construction which would effectually block the wheels of progress and reform and prevent the Legislature from dispensing with useless offices. The fact that the offices were consolidated *before* the election, and that the Sheriff was elected by the people of the same district, brings the case within the provision of the Constitution, which requires Collectors of taxes to be elected by the inhabitants of their districts." The reasoning of the learned Judge here sustains the text fully in all respects. See also "*Coroner acting as Sheriff*," *People vs. Phoenix*, 6 Cal., p. 92. See, also, confirming the first case *supra*, the cases of *People vs. Edwards*, 9 Cal., p. 292, and *Attorney General vs. Squires*, 14 Cal., p. 16. When Clerk and Recorder consolidated, the officer performs the Auditor's duties as Recorder.—*People vs. Darrach*, 9 Cal., p. 324; see, also, *People vs. Durick*, 20 Cal., p. 94. Must give bonds for each office, though consolidated, 38 Cal., p. 76; *People vs. Ross*.

Stats. 1871-2, p. 17.

*An Act to separate the office of County Recorder from the office of County Clerk in the County of Mendocino.*

[Approved January 8, 1872.]

[Enacting clause.]

SECTION 1. At the general election to be held on the first Wednesday in September, A. D. 1873, there shall be elected, in addition to the county officers now provided for by law, for the County of Mendocino, a County Recorder, whose office shall be separate and distinct from the office of County Clerk.

SEC. 2. The Recorder, whose election is provided for by this Act, shall enter upon the duties of his office on the first Monday in March, A. D. 1874, and hold office for the term of two years, and until his successor is elected and qualified.

SEC. 3. The fees of the said office of Recorder of said county shall be the same as those now existing by law for recording, etc., in said county.

**4106.** By an ordinance adopted, recorded, and published at least three months prior to a general election at which county officers are to be elected, the Boards of Supervisors of counties of the second class may unite and consolidate certain offices by declaring that:

Consolidating offices by the Board.

1. The Recorder elected shall be ex officio Auditor;
2. The County Clerk elected shall be ex officio Auditor and Recorder;
3. The Sheriff elected shall be ex officio Tax Collector; and,
4. The Coroner elected shall be ex officio Public Administrator.

NOTE.—As to consolidation of offices, see *Merrill vs. Gorham*, and other cases, in note to Sec. 4105, ante. See *People vs. Ross*, 38 Cal., p. 76, as to the bond by one exercising two offices,

Stats. 1871-2, p. 170.

*An Act to authorize the Public Administrator of Contra Costa County to act as Coroner.*

[Approved February 28, 1872.]

[Enacting clause.]

SECTION 1. The Public Administrator of Contra Costa County shall be ex officio Coroner. He shall

give such bond as the Supervisors of said county in their discretion shall from time to time order, for the faithful performance of the duties of the office.

SEC. 2. All laws and parts of laws in conflict with this Act are to be so construed as to be held inapplicable to the county aforesaid.

SEC. 3. This Act shall take effect sixty days after its passage.

Omission to  
consoli-  
date.

4107. When there is an omission by the Board of Supervisors to consolidate and to advertise the consolidation of offices as in the preceding section authorized, each office not so consolidated must be filled by an election.

Oath, bond,  
and fees  
of consoli-  
dated  
offices.

4108. When offices are united and consolidated either by the Code or by order of the Supervisors, the person elected to fill the offices so united and consolidated must take the oath and give the bond required for each, discharge all the duties pertaining to each, and receive the compensation affixed to the offices.

County  
officers,  
when  
elected,  
and term  
of office.

4109. All county and township officers, except judicial officers, Assessors, and Supervisors, must be elected at the general election in September, eighteen hundred and seventy-three, and every two years thereafter, and hold office for two years from the first Monday of January next after their election. Assessors must be elected at the general election in eighteen hundred and seventy-five, and every four years thereafter, and hold their office for four years from the first Monday of January next after their election, except that in the City and County of San Francisco the Assessor holds his office for the term of four years from the first Monday of December next after his election. Every Assessor now in office must hold his office and exercise the duties thereof until his successor is elected at the general election in eighteen hundred and seventy-five. The provision of this section, so far as it relates to the

*See 2-1874*

election and term of office of Assessors, applies to every county, and city and county in this State.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1st, 1872, cited in note to Sec. 18, ante. In the case of *Christy vs. The Board of Supervisors of Sacramento Co.*, 29 Cal., p. 9, it was contended that the Legislature by their appointment and attempting "to continue these Supervisors in office after the term for which they were elected had expired," violated Sec. 5, Art. XI, of the Constitution; but the Court held otherwise under Sec. 7, Art. XI, of the Constitution, declaring that this power had been frequently and constitutionally exercised, referring to numerous statutes therein cited on p. 12. See, also, on this point, *People vs. Provines*, where the whole question of the power of the Legislature over officers, the terms of which are not fixed by the Constitution, is fully discussed by Justice Sanderson, and concurred in by Sawyer, C. J., in a separate able opinion, citing numerous authorities.

Stats. 1871-2, p. 756.

*An Act to change the manner of electing Supervisors in the County of Del Norte, and prescribing the method thereof.*

[Approved March 30, 1872.]

[Enacting clause.]

SECTION 1. Members of the Board of Supervisors shall hold their office for the term of three years, except as hereinafter provided. There shall be chosen at the general election for State and county officers, on the first Wednesday of September, 1873, in the County of Del Norte, by the qualified electors thereof, one Supervisor for each Supervisor district in said county, who shall hold their offices as follows: District Number One, until the first day of January, 1874; District Number Two, until the first day of January, 1875, and District Number Three, until the first day of January, 1876.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

4110. The election and terms of office of County Judges and Justices of the Peace are provided for in Title I of THE CODE OF CIVIL PROCEDURE.

County  
Judges and  
Justices  
election,  
and term  
of office.

4111. In counties of the third class one Supervisor is elected each year at the general election when it

Supervisors, when elected.

occurs, and on the corresponding day of the alternate year when no general election occurs; in the counties of the first and second classes a number of Supervisors as nearly equal as may be, to be determined by the Board, are elected every year at the same times as specified herein for counties of the third class.

May appoint deputies.

4112. Every county and township officer, except County Judge, Supervisor, and Justice of the Peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office.

NOTE.—Powers and duties of deputies.—See Sec. 865, ante, and note. May be required to give bond.—See Sec. 985, ante.

Same.

4113. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships, must be made in writing, and filed in the office of the County Clerk.

Official name of principal officer includes deputies.

4114. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

Vacancies, how filled.

4115. A vacancy in the office of County Judge is filled by an appointee of the Governor. All other vacancies in county and township offices are filled by appointments made by the Board of Supervisors. Appointees hold until the vacancies are filled by election.

NOTE.—A vacancy in office of Supervisor is filled by appointee of County Judge.—See Sec. 4026, ante.

What offices to be kept at county seat.

4116. Sheriffs, Clerks, Recorders, Treasurers, Tax Collectors, District Attorneys, and Auditors, must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock A. M. till five o'clock P. M., every day in the year, except holidays. The County Judge must have chambers at the county seat, and must establish such rules and hours for official business as may be necessary for

the dispatch thereof. He must attend at his chambers at least one day in each week.

NOTE.—Stats. 1850, p. 261; 1863, p. 56, Sec. 7; 1851, p. 190, Secs. 10, 11; 1850, p. 115, Sec. 5; 1851, p. 199, Sec. 4.

4117. Whenever, except in criminal prosecutions, any special penalty, forfeiture, or liability is imposed on any officer for non-performance or mal-performance of official duty, the liability therefor attaches to the official bond of such officer, and to the principal and sureties thereon.

Civil penalty for non-performances of duty attached to official bond.

4118. Every officer mentioned in Section 4103, and every Justice of the Peace, may administer and certify oaths.

County officers may administer oaths.

4119. The following officers must reside at the county seat of their respective counties: the County Judge, the Treasurer, the County Clerk, the Auditor, the Sheriff, the Tax Collector, the District Attorney, the Recorder.

Certain officers must reside at county seat.

4120. No county officer must absent himself from the State for more than thirty days, unless with the consent of the Legislature.

Absence of county officers from State.

4121. Sheriffs, Clerks, and Constables and their deputies are prohibited from practicing law or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such.

Certain officers prohibited from practicing law.

NOTE.—Stats. 1850, p. 263, Sec. 10; 1850, p. 261, Sec. 11; 1851, p. 190, Sec. 51.

4122. County officers must execute official bonds corresponding to the class of the county of which they are officers, in the following amounts:

Official bonds classified, and amounts thereof.

1. Sheriffs: first class, sixty thousand dollars; second class, twenty-five thousand dollars; third class, ten thousand dollars.

Same.

2. Clerks: first class, twenty-five thousand dollars; second class, fifteen thousand dollars; third class, six thousand dollars.

3. Auditors: first class, twenty thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

4. Treasurers: first class, one hundred thousand dollars; second class, fifty thousand dollars; third class, twenty thousand dollars.

5. Recorders: first class, ten thousand dollars; second class, five thousand dollars; third class, two thousand dollars.

6. District Attorneys: first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

7. Assessors: first class, twenty thousand dollars; second class, ten thousand dollars; third class, three thousand dollars.

8. Tax Collectors: first class, fifty thousand dollars; second class, thirty thousand dollars; third class, fifteen thousand dollars.

9. Surveyors: first class, ten thousand dollars; second class, five thousand dollars; third class, one thousand dollars.

10. School Superintendents: first class, five thousand dollars; second class, three thousand dollars; third class, one thousand dollars.

11. Coroners: first class, five thousand dollars; second class, two thousand dollars; third class, one thousand dollars.

12. Public Administrators: first class, thirty thousand dollars; second class, twenty thousand dollars; third class, ten thousand dollars.

13. Supervisors: first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.



NOTE.—“Classification.”—See Sec. 4006, ante, and note. When offices consolidated bond must be given for each by incumbent.—*People vs. Ross*, 38 Cal., p. 76; see Secs. 947, 985, inclusive, ante, and notes. Deputies may be required to give bond.—Sec. 985, ante. See *consolidated offices*, note to Sec. 4105; see, also, references to Acts of 1872, in note to Sec. 4193, post. The following Acts of 1872, of a local or special character, are referred to with the subjects and pages given relating to county official bonds: Calaveras, of Constables as Tax Collectors, p. 178; Contra Costa, Public Administrator of, p. 183; El Dorado, county officers, p. 412; El Dorado, of officers of, pp. 592-595; El Dorado, Tax Collector, p. 378; El Dorado, Sheriff as ex officio Treasurer, p. 379; San Diego, of officers of, p. 200; San Francisco, of Coroner, p. 403; Ventura, of officers of, p. 488.

Stats. 1871-2, p. 21.

*An Act concerning certain officers in the County of Merced.*

[Approved January 16, 1872.]

[Enacting clause.]

SECTION 1. The bonds of the Public Administrator and Coroner of the County of Merced are hereby fixed at the sum of five thousand dollars each; *provided*, that the Board of Supervisors of said county may at any time order special bonds in addition thereto, when in their judgment said additional bonds may become necessary.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect from and after its passage.

Stats. 1871-2, p. 153.

*An Act to fix the bonds of the Sheriff of the County of Contra Costa.*

[Approved February 26, 1872.]

[Enacting clause.]

SECTION 1. The Sheriff of the County of Contra Costa, on or before entering upon the duties of his office, shall be required to take the oath of office and give bonds in the manner now prescribed by law, conditioned for the faithful performance of the duties of his office, in the sum of twenty thousand dollars.

SEC. 2. All Acts and parts of Acts conflicting with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect from and after its passage.

Stats. 1871-2, p. 183.

*An Act concerning official bond of Public Administrator of Contra Costa County.*

[Approved March 1, 1872.]

[Enacting clause.]

SECTION 1. The official bond of the Public Administrator of Contra Costa County is hereby fixed at the sum of five thousand dollars; *provided*, that the Board of Supervisors of said county may at any time order a special bond in addition thereto, when in their judgment said additional bond may become necessary.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

SEC. 3. This Act shall take effect from and after its passage.

Stats. 1871-2, p. 412.

*An Act to amend an Act entitled "An Act to regulate the fees and salaries of officers and defining their duties in the County of El Dorado, and other matters relating thereto," approved March 5th, 1870.*

[Approved March 16, 1872.]

[Enacting clause.]

SECTION 1. Section 39 of the above entitled Act is hereby amended so as to read as follows:

Section 39. The amount of bonds of the several officers named in this Act shall be as follows: County Clerk, ten thousand dollars; County Clerk, as ex officio Recorder, ten thousand dollars; County Clerk, as ex officio Auditor, ten thousand dollars; Sheriff, thirty thousand dollars; Sheriff, as ex officio County Treasurer, forty thousand dollars; Sheriff, as ex officio Tax Collector, twenty thousand dollars; Assessor, five thousand dollars; Assessor, as ex officio Collector of poll tax, road tax, and licenses, five thousand dollars; District Attorney, three thousand dollars; Surveyor, one thousand dollars; Coroner, one thousand dollars; Coroner, as ex officio Public Administrator, ten thousand dollars, which may be increased in the discretion of the Probate Judge; County Superintendent of Common Schools, two thousand dollars; Justices of the Peace, five hundred dollars; Constables, five hundred dollars.

SEC. 2. This Act shall take effect and be in force from and after its passage.

Amended again, Stats. 1872, p. 594-5, of Act approved March 27, 1872:

SEC. 7. Section 39 of said Act is hereby amended so as to read as follows:

Section 39. The amount of bonds of the several officers named in this Act shall be as follows: County Clerk, ten thousand dollars; County Clerk as ex officio Auditor, ten thousand dollars; County Clerk as ex officio Recorder, ten thousand dollars; Sheriff, thirty thousand dollars; Sheriff, as ex officio County Treasurer, forty thousand dollars; Assessor, five thousand dollars; Assessor, as ex officio Tax Collector of property taxes, twenty thousand dollars; Assessor, as ex officio Collector of poll tax and State and county business licenses, five thousand dollars; District Attorney, three thousand dollars; Surveyor, one thousand dollars; Coroner, one thousand dollars; Coroner, as ex officio Public Administrator, ten thousand dollars, which may be increased, in the discretion of the Probate Judge; County Superintendent of Common Schools, two thousand dollars; Justices of the Peace, five hundred dollars; Constables, five hundred dollars.

SEC. 8. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, so far as they relate to El Dorado County.

SEC. 9. This Act shall take effect and be in force from and after its passage, but shall not apply to any of the present county officers during their present term of office.

4123. When the amount of the bond to be given by any county or township officer is not fixed by law, the amount must be fixed by the Board of Supervisors.

When amount of bond is not fixed by law.

4124. Other provisions relating to the different classes of officers are contained in Chapter VII, Title I of Part III of this Code.

Other provisions relating to county officers.

NOTE.—See Secs. 841, 842, as to “qualifications.” “Oath,” Secs. 904, 908, 909, 910, ante. “Prohibitions in contracts,” etc., Secs. 920-926, 4077, ante. “Contested,” Secs. 936, 937, ante, and notes. “Bonds,” 947, et seq., and notes, ante. “Resignations, vacancies,” etc., Sec. 995, ante, Subds. 4, 5, and Secs. 996-1004, and notes, ante. “Delivery of official books,” etc., Secs. 1014-1016. “Office hours,” etc., Sec. 4116 and note, ante. “Removals,” Code Civil Procedure Cal., Secs. 802-809, inclusive, and note.

## ARTICLE II.

## COUNTY JUDGE.

## SECTION 4134. Duty of County Judge.

Duty of  
County  
Judge.

4134. •The County Judge must:

1. Perform the duties of a magistrate;
2. Hold County and Probate Courts;
3. Take and certify acknowledgments to the execution of instruments in writing, and grant certificates to the official character of the County Clerk;
4. Certify to the ownership of wrecked property or its proceeds; and
5. Perform such other duties as are prescribed in any of the laws of this State.

NOTE.—See Secs. 220, 920-926, 1014-1016, ante, and notes.

*Subd. 1.* Magistrate defined.—Penal Code Cal., Sec. 807 (§ 102), and note; id., Sec. 808 (§ 103), *Subd. 3.* County Judge magistrate, duties as such.—*Id.*, Secs. 811-829, inclusive, and notes; also, Secs. 858-883, and notes.

*Subd. 2.* County Court.—See Code of Civil Procedure Cal., Secs. 82-90. Judge, jurisdiction, etc.; forcible entry and detainer.—Sec. 1163. To dissolve corporation.—Sec. 1227. To change names.—Sec. 1275. Contest elections.—Secs. 1118-1122; see, also, *id.*, Secs. 106, 975-980, and 959. To hold Court in other county. *Id.*, Sec. 161. Discharge from imprisonment.—*Id.*, Sec. 1144. Chambers.—Sec. 166. Name successor to justice.—Sec. 918. Appeals.—Secs. 975-980. Probate Court.—Code Civil Procedure, Secs. 94-100. Jurisdiction, proceedings, and practice, in Title XI, Part III, Code Civil Procedure.

*Subd. 3.* See Civil Code Cal., Vol. I, p. 319, et seq., Secs. 1181-1201, and notes.

*Subd. 4.* See Secs. 2407-2415, ante, and notes. See *id.*, "Homestead," Secs. 1245-1258. In *People vs. Templeton* it was held that the Legislature could not change the term of County Judge.—See 12 Cal., p. 394. Similar to this is the case of *Roseborough*, County Judge of Siskiyou, 14 Cal., p. 187, where the Court say: "We held in the case of *Templeton*, supra, that the Constitution fixes the period of the tenure of a

Judge of a county, to wit: at four years," etc. Chief Justice Field concurred, on the authority of *The People vs. Weller ex rel. McKune*, 11 Cal., p. 49; and *The People vs. Martin*, 6 Cal., p. 477.—See Sec. 83, Co. Civ. Pro. Cal., and note. Salaries.—Sec. 4329, post, and note; Stats. 1871-2, pages and subjects as follows: Judge, County.—Colusa, Salary Fund of, p. 99; El Dorado, salary of, p. 594; Los Angeles, salary of, p. 62; San Joaquin, to appoint Phonographic Reporter, p. 551; Ventura, appointment, election, and salary of, p. 485.

## ARTICLE III.

## COUNTY TREASURER.

- SECTION 4144.** Duty of County Treasurer.
4145. To receive no money, except on certificate of Auditor.
4146. Must receipt for money.
4147. Mode of redeeming warrants.
4148. Registry of warrants, when no funds.
4149. Notice of redemption of warrants.
4150. What it must state, and how published.
4151. Priority in payment of warrants.
4152. Funds reserved sixty days therefor.
4153. Must note the interest paid on warrant.
4154. Settlements, when and how made—monthly and annually.
4155. Report to Board of Supervisors each session.
4156. Penalty for not reporting.
4157. When he must sue District Attorney.
4158. When he must sue Coroner.
4159. What he must do with property received from Coroner.
4160. Money from Coroner in Treasury may be demanded within six years.
4161. Treasurer must not loan public money or make general deposit.
4162. Supervisors may suspend Treasurer.
4163. No commissions allowed.
4164. Books and vouchers subject to inspection.
4165. Treasurer must permit Auditor to examine his books, etc.

**4144.** The County Treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;
- Duty of  
County  
Treasurer.

Same.

2. File and keep the certificates of the Auditor delivered to him when moneys are paid into the Treasury;

3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

4. So keep his books that the amount received and paid out on account of separate Funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the County Auditor;

6. Disburse the county moneys only on county warrants issued by the County Auditor, based on orders of the Board of Supervisors, or as otherwise provided by law.

NOTE.—Disbursements by Treasurer must be only on the warrants of the Auditor issued on claims allowed by the Supervisors.—*People vs. Fogg*, 11 Cal., p. 351; see notes to Sec. 220, ante, and note, and Sec. 176, Penal Code Cal.; also, *id.*, Secs. 424, 425, 426, 440.

*Subd. 6.*—See requirements of Sec. 925, ante, and note; also, Secs. 920–926, 1014–1016, ante, and notes.

To receive no money, except on certificate of Auditor.

4145. He must receive no money into the Treasury unless accompanied by the certificate of the Auditor provided for in Section 4217.

Must receipt for money.

4146. When any money is paid to the County Treasurer he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the County Auditor, who must charge the Treas-

under therewith and give the person paying the same a receipt.

4147. When a warrant is presented for payment, if there is money in the Treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

Mode of redeeming warrants.

NOTE.—Treasurer may refuse to pay warrants of Auditor not based on a legal charge against the county, and not allowed by the Board of Supervisors.—Keller vs. Hyde, 20 Cal., p. 593. So, also, one drawn on a void contract.—Perry vs. Ames, 26 id., p. 372. See, also, Connor vs. Morris, 23 id., p. 447. When payment is demanded by one not the payee named in the warrant, Treasurer may require an indorsement.—People vs. Gray, 23 Cal., p. 125.

4148. When any warrant is presented to the Treasurer for payment and the same is not paid for want of funds, the Treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant bears seven per cent per annum interest.

Registry of warrants, when no funds.

NOTE.—See notes to Secs. 4144–4147, ante, and Sec. 4151, post, and note.

4149. When there are sufficient moneys in the Treasury to pay the warrants drawing interest, the Treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the Court House door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest.

Notice of redemption of warrants

NOTE.—Stats. 1850, p. 115, Sec. 11.

4150. In advertising warrants under the provisions of this section in any newspaper, the Treasurer must not publish the warrants in detail, but give notice

What it must state, and how published.

only that county warrants presented for payment prior to such a date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the Treasurer must designate such payable warrants in the advertisement.

Priority in  
payment of  
warrants.

4151. Warrants drawn on the Treasury and properly attested are entitled to preference as to payment out of moneys in the Treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the Treasurer, and upon the receipt of moneys into the Treasury not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

NOTE.—See Taylor vs. Brooks, 5 Cal., p. 332; McCall vs. Harris, 6 id., p. 281; Laforge vs. Magee, id., p. 285; McCauley vs. Brooks, 16 id., p. 11; Cocke vs. Hendley, 18 id., p. 369; McDonald vs. Bird, 18 id., p. 197. There is no doubt that mandamus is the proper remedy to compel a County Treasurer to satisfy the warrant described in the complaint.—Day vs. Callow, 39 Cal., p. 596.

Funds  
reserved  
sixty days  
therefor.

4152. Should such warrants not be re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the Treasurer applied to the payment of unpaid warrants next in order of registry. The Board of Supervisors may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the Treasurer to pay them out of any money in the Treasury not otherwise appropriated.

Must note  
the interest  
paid on  
warrant.

4153. When the Treasurer pays any warrant on which any interest is due he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.



4154. The Treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue, of whatsoever nature and kind, with the Auditor, on the first Monday of each month. For the purpose of making such settlement he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the Auditor's receipt therefor. He must also make a full settlement of all accounts with the Auditor annually on the first Monday of January, in the presence of the Supervisors, who have a supervisory control thereof.

Settlements, when and how made—monthly and annually.

NOTE.—See Penal Code Cal., Secs. 176, 434, 436.

4155. Each County Treasurer must make a detailed report, at every regular meeting of the Board of Supervisors of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the Treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

Report to Board of Supervisors each session.

4156. If any County Treasurer neglects or refuses to settle or report, as required in Sections 4154, 4155, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the Board of Supervisors must institute suits for the recovery thereof.

Penalty for not reporting.

4157. If the District Attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of Section 4256, the County Treasurer must bring an action against him for

When he must sue District Attorney.

the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent thereon by way of damages.

When he must sue Coroner.

4158. If the Coroner, or any Justice of the Peace acting as Coroner, fails to deliver to the Treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the Public Administrator or other legal representative of the decedent, as required by Section 4287, the Treasurer must proceed against the Coroner, or Justice acting as Coroner, to recover the same by civil action in the name of the county.

What he must do with property received from Coroner.

4159. The Treasurer, upon receiving from the Coroner, or Justice acting as Coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner, he must within thirty days sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

Money from Coroner in Treasury may be demanded within six years.

4160. If the money in the Treasury is demanded within six years by the legal representatives of the decedent, the Treasurer must pay it to them, after deducting the fees and expenses of the Coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the Board of Supervisors.

Treasurer must not loan public money or make general deposit.

4161. The County Treasurer must keep all moneys belonging to this State or to any county of this State in his own possession until disbursed according to law. He must not place the same in the possession of any person, to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this

section prohibits him from making special deposits for the safe keeping of the public moneys.

4162. Whenever an action based upon official misconduct is commenced against any County Treasurer, the Supervisors may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

Supervisors  
may  
suspend  
Treasurer.

4163. In case of the death of any County Treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the Treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessor.

No com-  
missions  
allowed.

4164. The books, accounts, and vouchers of the Treasurer are at all times subject to the inspection and examination of the Board of Supervisors and Grand Jury.

Books and  
vouchers  
subject to  
inspection.

4165. The Treasurer must permit the County Judge and Auditor to examine his books and count the money in the Treasury whenever they may wish to make an examination or counting.

Treasurer  
must  
permit  
Auditor to  
examine  
his  
books, etc.

NOTE.—This provision is based upon the Act creating the efficient State Board of Examiners.—See Secs. 3422, 3424, 3428, ante. The following local and special statutes of 1872 are not presented here in full, because not general in character, and because many of them are superseded by the Codes; but the subjects on the pages given refer to County Treasurers: Alameda, salary of, p. 720; Alameda, to pay certain claims against, p. 419; Alameda, to pay road tax to Treasurer of City of Oakland, p. 4; Butte, salary of, p. 709; Colusa, Samuel Cross, to pay claim of, p. 893; El Dorado, bonds of, p. 379; El Dorado, Controller to credit with poll tax receipts, p. 911; El Dorado, Sheriff, ex officio, p. 378; Humboldt, salary of, p. 169; Inyo, to credit Bishop Creek and Round Valley School Districts with certain moneys, p. 317; Lake, Thomas Allison, to pay claim of, p. 53; Lake, when to pay certain claims against, p.

156; Marin, to countersign bonds for erection of Court House and Jail, p. 27; Mariposa, to pay certain moneys into General Fund, p. 899; Mendocino, to countersign bonds for erection of county buildings, p. 24; Plumas, Bond Commissioner, to be, p. 770; Sacramento, Samuel Cross, to pay claim of, p. 893; Sacramento, duties under Act for further reclamation of Swamp Land Districts Fifty and Fifty-four, pp. 881-885; San Bernardino, salary of, p. 495; San Diego, duties of, pp. 196, 197; San Francisco, funded debt, duty in relation to, p. 909; San Francisco, J. M. Kane, to pay claim of, p. 118; San Francisco, Montgomery Avenue, duties concerning opening of, pp. 911-924; San Francisco, relative to duties of, in open canal through Channel street and Mission Creek, pp. 926-939; San Francisco, Revenue Fund Commissioner, to be, p. 773; San Joaquin, J. G. Jenkins, to pay claim of, p. 859; San Joaquin, salary and fees of, p. 874; San Joaquin, Swamp Land District Seventeen, duties in relation to, pp. 906-908; San Joaquin, transfer from certain funds to General School Fund, p. 361; San Luis Obispo, to keep account of certain moneys, p. 91; Santa Barbara, bonds, county, duties regarding, pp. 56-58; Santa Barbara, bonds, school, relative to, p. 123; Santa Barbara, to keep account of certain moneys, p. 91; Santa Clara, bonded indebtedness of, duty in relation to refunding of, pp. 896-899; Siskiyou, Indian Fund, transfer of to School Fund, p. 418; Siskiyou, Relief Fund, to pay warrants drawn on, p. 82; Siskiyou, School Funds, transfer of, p. 81; Stanislaus, Court House and Jail, duties concerning bonds issued for erection of, pp. 40-43; Stanislaus, salary of, p. 183; Sutter, Samuel Cross, to pay claim of, p. 893; Sutter, Swamp Land Fund, to transfer to Court House Fund, pp. 320, 321; Ventura, bond of, p. 488; Ventura, salary of, p. 489; Yolo, Samuel Cross, to pay claim of, p. 893; duties of concerning assessment of animals, p. 754; to give notice of payments due for reclamation purposes, p. 840; fees for collection of assessments for reclamation purposes, p. 841; to pay into State Treasury money received on swamp lands in certain districts, p. 873.

## ARTICLE IV.

## SHERIFF.

- SECTION 4175.** "Process" and "notice" defined.
4176. Duties of Sheriff.
4177. Service and execution of process.
4178. Return primary evidence.
4179. Penalty for non-return of process, etc.
4180. Liable for refusing to levy.
4181. Damages for refusing to pay over money.
4182. Liable for permitting an escape.
4183. Liable for a rescue.
4184. No action for escape or rescue after recapture.
4185. Direction to Sheriff must be in writing.
4186. When office of Sheriff deemed vacant.
4187. When Sheriff justified in executing process.
4188. Officer to exhibit process.
4189. Sheriff to act as crier.
4190. Service on Sheriff, how made.
4191. Coroner to execute process when Sheriff is a party.
4192. Elisors to act in cases designated.
4193. Other duties.

4175. "Process," as used in this Article, includes all writs, warrants, summons, and orders of Courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any Court, Board, or officer, or when required by law to be served independently of such proceeding.

"Process"  
and  
"notice"  
defined.

NOTE.—See note to Sec. 220, ante, and note to Sec. 4187, post; also, Secs. 920-926, ante, and notes, and Secs. 1014-1016, ante, as to delivery of office books, etc., to successor. See duties of as "Tax Collector," Title IX, ante; "Revenue" and "Licenses," Secs. 3356-3364, 3376-3387, ante, and notes. Sheriff, as Tax Collector, to give bond for each office.—People vs. Ross, 38 Cal., p. 76.

4176. The Sheriff must:

Duties of  
Sheriff.

1. Preserve the peace;
2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or who have committed a public offense;

Same.

3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

4. Attend all Courts, except Justices', Probate, and Police Courts, at their respective terms, held within his county, and obey their lawful orders and directions;

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

6. Take charge of and keep the County Jail and the prisoners therein;

7. Indorse upon all process and notices the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

8. Serve all process and notices in the manner prescribed by law;

9. Certify under his hand upon process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

*NOTE.—Subd. 1.—See Penal Code Cal., Sec. 817. Sheriff is a peace officer.*

*Subd. 2.—Refusing to arrest, how punished.—Id., Sec. 142. See other duties prescribed in the Penal Code and Code of Civ. Pro., under appropriate heads.*

Service and execution of process.

4177. When process or notices are returnable to another county, he may inclose such process or notice in an envelop, addressed to the officer from whom the same emanated, and deposit it in the Post Office, pre-paying postage.

Return primary evidence.

4178. The return of the Sheriff upon process or notices is primary evidence of the facts in such return stated.

NOTE.—Return of a Sheriff, how to be construed.—  
Moore vs. Martin, 38 Cal., p. 438. This case may also  
be consulted on the subject of a Sheriff's deed.

4179. If the Sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

Penalty for non-return of process, etc.

4180. If the Sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property.

Liable for refusing to levy.

NOTE.—Sheriff is liable to owner, not judgment debtor, whose property he sells wrongfully to its full value.—Spencer vs. Long, 39 Cal., p. 700.

4181. If he neglects or refuses to pay over on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand, may be recovered by such person.

Damages for refusing to pay over money.

4182. A Sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

Liable for permitting an escape.

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation.

Liabie for  
a rescue.

4183. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

No action  
for escape  
or rescue  
after  
recapture.

4184. An action cannot be maintained against the Sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the Jail, or is retaken by the Sheriff.

Direction  
to Sheriff  
must be in  
writing.

4185. No direction or authority by a party or his attorney to a Sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the Sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney.

NOTE.—See Crocker on Sheriffs, p. 165; 2 Caines, p. 248; 4 Johps., p. 450; see note to Sec. 4187, post.

When office  
of Sheriff  
deemed  
vacant.

4186. When the Sheriff is committed under an execution or commitment, for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

When  
Sheriff  
justified in  
executing  
process.

4187. A Sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

NOTE.—“His (Sheriff's) duties are entirely executive or ministerial, in which capacity he may be said to execute the laws of the State.”—Chief Justice Murray, in *Merrill vs. Gorham*, 6 Cal., p. 42; *People vs. Phenix*,



6 id., p. 92. In the case of *Krum vs. King*, 12 Cal., p. 413, it was held that a deputy cannot bind his principal by a contract, not in due course of his office, without special authority. The "law holds public officers to a strict performance of their respective duties."—*Whitney vs. Butterfield*, 13 Cal., p. 888. "A Sheriff is bound to use all reasonable endeavors to execute process."—*Hinman vs. Borden*, 10 Wend., N. Y., p. 367. In *Lindley's Executors vs. Armfield*, 3 Hawks. N. C. R., the Court say: "The Sheriff should proceed with all convenient speed to levy the execution."—*Bacon's Abridg.*, Title "Sheriff." The American rule, however, is said not to be so strict as that of the last cited author, but this author says the Sheriff must not be guilty of "unreasonable delay." In *Kennedy vs. Brant*, 6 Cranch, C. J. Marshall says "process must be served as soon as it reasonably can be."—See "Diligence," Civil Code Cal., Vol. 1, p. 11, Sec. 16, and note. "Negligence," id., Sec. 17; *Whitney vs. Butterfield*, supra, p. 342. Power of deputy to execute and in absence of principal.—*Mills vs. Tukey*, 22 Cal., p. 377.

4188. The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

Officer to exhibit process.

4189. The Sheriff in attendance upon Court must act as the Crier thereof, call the parties and witnesses and all other persons bound to appear at the Court, and make proclamation of the opening and adjournment of the Court, and of any other matter under its direction.

Sheriff to act as crier.

4190. Service of a paper, other than process, upon the Sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

Service on Sheriff, how made.

4191. When the Sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the Sheriff to execute, must be executed by the Coroner of the county.

Coroner to execute process when Sheriff is a party.

Elisors to  
not in cases  
designated.

4192. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the Court, the Judge thereof, or a County Judge, and denominated an Elisor, in the following cases:

1. When the Sheriff and Coroner are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the Court in which the proceeding is pending, or the Judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

When process is delivered to an Elisor, he must execute and return it in the same manner as the Sheriff is required to execute similar process.

NOTE.—Stats. 1857, p. 323, Sec. 1.

Other  
duties.

4193. The Sheriff must perform such other duties as are required of him by law.

NOTE.—For duties with regard to revenue, see Title IX, ante; and "Licenses," Secs. 3356-3387, ante, and notes. See following references to sections of the Penal Code Cal. for penalties and duties of Sheriff; suffering convicts to escape, Sec. 108; refusing to receive or arrest parties accused of crime, id. 142; duty of, on receiving copy of judgment of imprisonment, id. 1216; warrant for execution of death sentence to be delivered to, id. 1217; duty of, at execution of death sentence, id. 1229; duty of, after execution of death sentence, id. 1230; to receive prisoners committed by U. S. Courts, id. 1601; answerable for safe keeping of such, id. 1602; papers served on, for prisoner, id. 1609; to receive all persons duly committed, id. 1611; when not to receive prisoners, id. 1612; neglect of official duty, id. 178. Also, the following sections of the Code of Civil Procedure of Cal.: To provide Court room, Sec. 144; proof of service of summons, Sec. 415; liable for escape, Sec. 501; for selling on execution without notice, Sec. 693; on a resale under execution, Sec. 697; how to keep party

arrested on Justice process, Sec. 865; notify plaintiff of such arrest, Sec. 864; detain person arrested for contempt, how long, Sec. 1214; provisions for arrest of witness, Secs. 1268, 1269. See Stats. 1871-2, pages and subjects as follows: Sheriff—Contra Costa, bonds of, p. 158; El Dorado, bonds of, pp. 412, 594; El Dorado, bonds, additional as Treasurer, p. 379; El Dorado, ex officio Treasurer, p. 584; El Dorado, salary of, p. 594; Humboldt, compensation of as Jailer, p. 797; Kern, traveling fees of, p. 141; Monterey, concerning fees of, p. 419; Nevada, salary of and deputies, p. 843; San Bernardino, fees of, pp. 493, 494; San Diego, ex officio Tax Collector, p. 203; San Francisco, additional deputies, p. 904; San Francisco, duties in relation to an open canal through Channel street and Mission Croek, pp. 926-939; San Francisco, fees of, pp. 776-778; San Joaquin, salary of and deputies, p. 874; San Luis Obispo, salary of, pp. 425, 426; Santa Clara, salary for deputies, p. 662; Santa Cruz, fees of, pp. 331, 332; Siskiyou, collection of school tax, p. 2; Solano, ex officio License Collector, p. 624; Solano, salary as Jailer, p. 624; Sonoma, to render quarterly statement of fees, p. 583; Ventura, bond of, p. 488.

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## ARTICLE V.

### COUNTY CLERK.

#### SECTION 4204. Duties of County Clerk.

##### 4205. Other duties.

#### 4204. The County Clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office. Duties of  
County  
Clerk.
2. Act as Clerk of the Board of Supervisors, and as Clerk of the District, County, and Probate Courts, and attend each term thereof, and upon the Judges at Chambers when required.
3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each Court a docket, in which must be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent

Same.

proceeding therein, with the date thereof, and a list of all the fees charged.

4. Keep for the District and County Courts, in separate volumes, an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in Judgment Book," "Page of Minute Book of District Court;" also an index labeled "General Index—Defendants," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in Judgment Book," "Page in Order Book of District Court."

NOTE.—See Penal Code Cal., Secs. 71, 176; Secs. 220, 920-926, 1014-1016, ante, and notes, and note to Sec. 4205, post.

Other duties.

4205. He must keep such other records and perform such other duties as are prescribed by law.

NOTE.—See Penal Code Cal.—To prepare calendar, Sec. 1047; transmit appeal papers without charge, Sec. 1246; and other duties, see index, id. See Code Civil Procedure Cal.—To take testimony, Sec. 1051; indorse complaint, id. 406; register action, id. 1052; in contest of election, id. 1118; confession of judgment, id. 1134; submitting action to arbitrators, id. 1283; certify copy of verdict in mandamus case, id. 1093; return to writ of review, id. 1070; invest what proceeds in his name, id. 789-791; summons, id. 407; and other references in index, id. Clerk of Probate Court—certificate of probate of will—record.—Code Civ. Pro. Cal., Sec. 1318; letters of administration, id. 1356, 1371, 1373, 1384, 1387, 1412, 1684, 1773; citation, id. 1384; certify transcript of appointment, id. 1429; subpoenas, etc., id. 1707, 1708; register claims, id. 1497; and other references in the index, id. Civil Code Cal.—License to marry, Sec. 69; certify acknowledgment, Sec. 1194;

appraising homestead, Sec. 1247; file articles incorporation, Sec. 296; certify formation of special partnerships, Sec. 2480; dissolution of same, Sec. 2509; register partnership names, Sec. 2470; take acknowledgments, Sec. 1181, etc.

ARTICLE VI.

AUDITOR.

- SECTION 4215.** Auditor to draw warrants and settle accounts.  
 4216. Warrants must specify what.  
 4217. Settlements with debtors to the county.  
 4218. To keep accounts, file receipts, etc.  
 4219. Warrants of Auditor to be numbered.  
 4220. Auditor to examine books of Treasurer, when.  
 4221. Auditor and County Judge to count money in Treasury and make statement.  
 4222. Statements to be filed and posted.  
 4223. Quarterly statements concerning collection of revenue to be made, when.  
 4224. Other duties.

4215. The Auditor must draw warrants on the County Treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the Board of Supervisors; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal.

Auditor to draw warrants and settle accounts.

**NOTE.**—See note to Secs. 220, 4105, ante. Must draw warrants pursuant to order of the Supervisors.—Connor vs. Morris, 25 Cal., p. 447. See Secs. 920-926, ante, and notes. Must require of every officer presenting claim to make affidavit.—See Sec. 924, ante, and note; and also Secs. 1014-1016, ante, as to delivery of office books, etc., to successor.

4216. All warrants must distinctly specify the liability for which they are drawn, and when it accrued.

Warrants must specify what.

**NOTE.**—See Sec. 4076, ante.

4217. The Auditor must examine and settle the accounts of all persons indebted to the county, or

Settle-  
ments with  
debtors  
to the  
county.

holding moneys payable into the County Treasury, and must certify the amount to the Treasurer, and upon the presentation and filing of the Treasurer's receipt therefor give to such person a discharge, and charge the Treasurer with the amount received by him.

NOTE.—See duties of Auditor with regard to licenses, Secs. 3356-3364, and notes, ante.

To keep  
accounts,  
file  
receipts,  
etc.

4218. The Auditor must keep accounts current with the Treasurer, and when any person deposits with the Auditor any receipt given by the Treasurer for any money paid into the Treasury, the Auditor must file such receipt and charge the Treasurer with the amount thereof.

Warrants  
of Auditor  
to be  
numbered.

4219. All warrants issued by the Auditor during each year, commencing with the first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

Auditor to  
examine  
books of  
Treasurer,  
when.

4220. The Auditor must, between the first and tenth of each month, examine the books of the Treasurer and see that the same have been correctly kept.

Auditor  
and  
County  
Judge to  
count  
money in  
Treasury  
and make  
statement.

4221. The County Judge and Auditor must, at least once in each month, count the money in the County Treasury, and make and verify in duplicate statements showing:

1. The amount of money that ought to be in the Treasury;
2. The amount and kind of money actually therein.

NOTE.—This and the succeeding section to a certain extent create a County Board of Examiners. Their duty here provided is to the County Treasury the same as that of the State Board to the State Treasury. See Penal Code, Sec. 176.

**4222.** They must file one of the statements in the office of the County Clerk, and the Auditor must post and maintain the other in his office for at least a month thereafter.

State-  
ments to  
be filed  
and posted.

**4223.** The Auditor and Treasurer of each county must, on the first Monday in February, May, August, and November, make a joint statement to the Board of Supervisors, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the County Treasury, the Funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what Fund; the total amount of warrants drawn and unpaid, and accounts or claims audited, or allowed and unpaid, and the Fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county.

Quarterly  
state-  
ments  
concerning  
collection  
of revenue  
to be made,  
when.

NOTE.—“Neglect of official duty,” Sec. 176, Penal Code Cal. See, also, id., Sec. 71.

**4224.** The Auditor must discharge such other duties as are required by law.

Other  
duties.

NOTE.—Auditor's powers and duties in drawing warrants, see *Connor vs. Morris*, 25 Cal., p. 447; *Nougues vs. Douglass*, 7 Cal., p. 65. When offices of Clerk and Recorder are consolidated, Recorder is Auditor, and that officer acts as such.—*People vs. Darrach*, 9 Cal., p. 324; see, also, *People vs. Durick*, 20 Cal., p. 94. See “Revenue” and “Supervisors,” ante.

In the case of the *People vs. Ashbury*, Auditor (No. 3537), mentioned in note to Sec. 3713, ante, on the 26th inst. the Supreme Court of California rendered a decision without deciding the constitutional question, concluding as follows:

“In *People vs. Board of Supervisors* (No. 3447), at this term, we held, and accordingly adjudged, that the order now again brought forward here to sustain the action of the Auditor, by which the Board assumed to remove these assessments from the Assessor's book, was

null and void in the absolute sense, because *the statute had not conferred authority upon the Board to cancel or strike out an assessment under any circumstances.* That no such power is given is obvious upon examination of the Act itself, and that unless it be found there it cannot exist, is too clear to require argument.

"The order being a mere nullity, is of course to be disregarded altogether; the lines or marks placed upon the assessment roll and intended to indicate that an assessment found thereon has been canceled, or set aside by order of the Board, are nullities also, as much so as if placed there by any other person or tribunal not having the semblance of authority to alter the book in that respect.

"This view disposes of the case; for upon looking into the records we do not find such a case presented as would justify us in entering upon a consideration of the constitutional question supposed to be involved, and so ably argued by one of the counsel for the respondent."

Acts of 1872, on the subjects and pages given below, are of a local and special character and refer to the County Auditor: Butte, salary of, p. 709; Colusa, to draw warrant in favor of Samuel Cross, p. 893; Contra Costa, duty of relative to roads, p. 789; Lake, when to draw warrants for certain claims, p. 156; Lake, to draw warrant in favor of Thomas Allison, p. 53; Lassen, duty relative to road tax receipts and accounts, p. 68; Marin, to countersign bonds for erection of Court House and Jail, p. 27; Mariposa, to be paid a portion of salary by the State, p. 899; Mendocino, to issue bonds for erection of county buildings, p. 24; Napa, to draw warrant for salary of Assessor, p. 437; Nevada, to issue road tax receipts, p. 455; Plumas, duty relative to road tax receipts and accounts, p. 68; Plumas, to prepare poll tax receipts, p. 321; Plumas, to be Bond Commissioner, p. 770; Sacramento, to count certain warrants as cash, p. 248; Sacramento, duties under Act for reclamation of Swamp Land Districts Nos. Fifty and Fifty-four, pp. 881-885; Sacramento, to draw warrant in favor of Samuel Cross, p. 893; San Bernardino, fees of, p. 495; San Diego, duties of, pp. 196-198; San Francisco, to audit the claim of J. M. Kane, p. 118; San Francisco, to be Revenue Fund Commissioner, p. 773; San Francisco, duty in relation to the funded debt, p. 909; San Francisco, duties concerning opening of Montgomery Avenue, pp. 911-924; San Joaquin, to audit claim of J. G. Jenkins, p. 860; San Luis Obispo, to keep account of certain moneys, p. 91; Santa Barbara, duties regarding county bonds, pp. 56-58; Santa Bar-



bara, to keep account of certain moneys, p. 91; Santa Barbara, duty relative to school bonds, p. 123; Santa Clara, salary of deputy, p. 859; Santa Clara, duties in relation to refunding the bonded indebtedness, pp. 896-899; Siskiyou, to apportion school tax, p. 3; Siskiyou, to draw warrants on the Relief Fund, p. 34; Siskiyou, to draw warrant for transfer of School Fund, p. 81; Siskiyou, to draw warrant on Indian Fund, p. 418; Sonoma, salary of, p. 583; Stanislaus, duties concerning bonds issued for building Court House and Jail, p. 41; Sutter, to draw warrant in favor of Samuel Cross, p. 893; Tehama, duties relative to schools, p. 130; Yolo, compensation of, p. 179; Yolo, to make and file copy with County Treasurer of assessments due for reclamation purposes, p. 840; Yolo, to draw warrant in favor of Samuel Cross, p. 893.

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ARTICLE VII.

RECORDER.

**SECTION 4234.** Recorder to procure record books.

4235. What to be recorded.

4236. Indexes to be kept by Recorder.

4237. Records of certificates of sale.

4238. To record decrees of partition.

4239. Filing of copy to impart notice.

4240. May keep two or more indexes in same volume.

4241. Recorder's duty on receipt of instrument to be recorded.

4242. Recorded instruments to be indorsed.

4243. Recorder to make searches.

4244. Liable for neglect of certain duties.

4245. Fees to be prepaid.

4246. Records to be open for inspection.

4234. The Recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the Board of Supervisors. He has the custody of and must keep all books, records, maps, and papers deposited in his office.

Recorder  
to procure  
record  
books.

NOTE.—See note to Sec. 220, ante; also, Sec. 920, et seq.; also, Secs. 1014-1016, ante. See Secs. 3450-3453, et alia, ante, "Public lands." The functions devolved by law on the Auditor are performed by the Recorder when the office of Recorder and Clerk are consolidated.

See *People vs. Darrach*, 9 Cal., p. 324; and *People vs. Durick*, 20 Cal., p. 94. For duties of Recorder other than in this Article specified, see Civil Code Cal., index, title "Recorder" and "Recording;" Co. Civ. Pro. Cal., Titles "Lis pendens," "Attachment," "Partition."

What to be recorded.

4235. He must, upon the payment of his fees for the same, record separately, in large and well bound separate books, in a fair hand:

1. Deeds, grants, transfers, and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;

2. Mortgages of personal property;

3. Certificates of marriage and marriage contracts;

4. Wills admitted to probate;

5. Official bonds;

6. Notices of mechanics' liens;

7. Transcripts of judgments which by law are made liens upon real estate;

8. Notices of attachments upon real estate;

9. Notices of the pendency of an action affecting real estate, the title thereto, or possession thereof;

10. Instruments describing or relating to the separate property of married women;

11. Notices of preëmption claims;

12. Births and deaths; and,

13. Such other writings as are required or permitted by law to be recorded.

NOTE.—*What may be recorded.*—See Civil Code Cal., Vol. I, pp. 315-317, Secs. 1158-1164. *Mode of recording.*—*Id.*, Secs. 1169-1173. "Homesteads."—*Id.*, Secs. 1264, 1268.

*Subd. 1.*—Civil Code Cal., Sec. 1158, et seq. Mortgages of realty and powers to execute.—*Id.*, Secs. 2933-2937, 2940, 2941, 2952, 2963.

*Subd. 2.*—*Id.*, Secs. 2959-2962.

*Subd. 3.*—*Id.*, Secs. 74, 75, 77, 179, and Sec. 3079, ante.

*Subd. 4.*—Code Civil Procedure Cal., Sec. 1322.

*Subd. 5.*—Political Code Cal., Secs. 950, 951.

*Subds. 6, 7, 8, 9.*—See Civil Code Cal., Secs. 1158-1164; Code Civil Procedure, Secs. 409, 542.

*Subd. 10.*—Civil Code Cal., Sec. 165.

*Subd. 11.*—*Id.*, Sec. 1158.

*Subd. 12.*—See Secs. 3079, 3080, *ante.*

**4236.** Every Recorder must keep:

1. An index of deeds, grants, and transfers, labelled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, or transfers," and "Where recorded." Indexes to be kept by Recorder.

2. An index of deeds, labelled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, or transfers," and "Where recorded."

3. Two indexes of mortgages, labelled respectively: "Mortgagors of real property," "Mortgagors of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," "When discharged."

4. Two indexes of "Mortgagees," labelled respectively: "Mortgagees of real property," "Mortgagees of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," "When discharged."

5. Two indexes of release of mortgages, labelled respectively: "Releases of mortgages of real property—mortgagors," "Releases of mortgages of personal property—mortgagors," with the pages thereof divided into six columns, headed respectively: "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," "Where mortgages released are recorded."

6. Two indexes of releases of mortgages, labelled

Same

respectively: "Releases of mortgages of real property—mortgagees," "Releases of mortgages of personal property—mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

7. An index of powers of attorney, labelled "Powers of Attorney," each page divided into five columns, headed respectively: "Names of parties executing the powers," "To whom powers are executed," "Date of powers," "Date of recording," "Where powers are recorded."

8. An index of leases, labelled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded."

9. An index of leases, labelled "Lessees," each page divided into four columns, headed respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded."

10. An index of marriage certificates, labelled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

11. An index of marriage certificates, labelled "Marriage certificates—Women," each page divided into six columns, headed respectively: "Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

12. An index of assignments of mortgages and leases, labelled "Assignments of Mortgages and Leases—As-

signors," each page divided into five columns, headed *Same.* respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignments," "When and where recorded."

13. An index of assignments of mortgages and leases, labelled "Assignments of Mortgages and Leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments assigned," "Date of assignments," "When and where recorded."

14. An index of wills, labelled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded."

15. An index of official bonds, labelled "Official Bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded."

16. An index of notices of mechanics' liens, labelled "Mechanics' Liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices when and where recorded."

17. An index to transcripts of judgments, labelled "Transcripts of Judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied."

18. An index of attachments, labelled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," "When attachments discharged."

19. An index of notices of the pendency of actions,

Same. labelled "Notices of Actions," each page divided into three columns, headed respectively: "Parties to the actions," "Notices when recorded," "Where recorded."

20. An index of the separate property of married women labelled "Separate Property of Married Women," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded."

21. An index of preëmption claims, labelled "Pre-emption Claims," each page divided into five columns, headed respectively: "Claimants," "Notices," "When received," "Date of notices," "When and where recorded."

22. An index to the Register of births and deaths.

Records of  
certificates  
of sale.

4237. The Recorder must keep in his office a book to be called "Certificates of Sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which in separate columns he must enter the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale.

NOTE.—Stats. 1865-6, p. 813, Sec. 1.

To record  
decrees of  
partition.

4238. The Recorder must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is Recorder.

NOTE.—Stats. 1870, p. 798, Sec. 1; see Civil Code Cal., Sec. 1159.

Filing of  
copy to  
impart  
notice.

4239. Every such certified copy of partition, from the time of the filing the same with the Recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and

lienholders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant, or transfer.

NOTE.—Stats. 1870, p. 798, Sec. 2.

4240. The Recorder may keep in the same volume any two or more of the indexes mentioned in Section 4236, but the several indexes must be kept distinct from each other, and the volume distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a Sheriff, the name of the Sheriff and the party charged in the execution must both be inserted in the index, and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

May keep two or more indexes in same volume.

4241. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the Recorder's office for record, the Recorder must indorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, together with the acknowledgments, proofs, and certificates, written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

Recorder's duty on receipt of instrument to be recorded.

4242. He must also indorse upon each instrument, paper, or notice, the time when and the book and pages

Recorded instruments to be indorsed.

in which it is recorded, and must thereafter deliver it upon request to the party leaving the same for record, or to his order.

Recorder to make searches.

4243. The Recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

LIABLE FOR neglect of certain duties.

4244. If any Recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within a reasonable time after receiving the same; or,

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,

3. Neglects or refuses to keep in his office such indexes as are required by this Article, or to make the proper entries therein; or,

4. Neglects or refuses to make the searches and to give the certificate required by this Article; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or,

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein;—He is liable to the party aggrieved for three times



the amount of the damages which may be occasioned thereby.

NOTE.—See Penal Code, Secs. 176, 471; see, also, other offenses relating to records, id., Secs. 113, 114, 115, 470.

4245. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered.

Fees to be prepaid.

4246. All books of record, maps, charts, surveys, and other papers on file in the Recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the Recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

Records to be open for inspection.

NOTE.—See note to Sec. 4234, ante. See local and special Acts, Stats. 1871-2, pages and subjects given below, relative to County Recorder: Alameda, salary of, p. 720; Mendocino, separated from office of County Clerk, p. 17; Mendocino, term of office, p. 17; Mendocino, fees of, p. 17; Nevada, salary of, and deputies, p. 844; San Bernardino, fees of, p. 492; San Joaquin, salary of, p. 876; San Luis Obispo, to transcribe certain records, p. 402.

## ARTICLE VIII.

### DISTRICT ATTORNEY.

SECTION 4256. Duties of District Attorney.

4257. Legal adviser of Supervisors.

4258. Must not act as attorney for claims against his own county.

4256. The District Attorney is the public prosecutor, and must:

Duties of District Attorney.

1. Attend the District and County Courts, and conduct, on behalf of the people, all prosecutions for public offenses;

Same.

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the District or County Court, must attend upon the magistrates in cases of arrest, when required by them, and attend before and give advice to the Grand Jury, whenever cases are presented to them for their consideration;

3. Draw all indictments, defend all suits brought against the State or his county, prosecute all recognizances forfeited in the Courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the State or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the County Treasurer;

5. On the first Mondays of January, April, July, and October, in each year, file with the Auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the County Treasurer;

6. Give when required, and without fee, his opinion (in writing) to county, district, and township officers on matters relating to the duties of their respective offices; and,

7. Keep a register of official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein;

8. Perform such other duties as are prescribed by law.

NOTE.—See Sec. 220, ante, and note; also, Secs. 920-926, 1014-1016, ante. Qualification to hold this office; not necessary to be an admitted attorney at law.—See *People vs. Dorsey*, 82 Cal., p. 296. The term of office

of District Attorney is not fixed by the Constitution, but by the Legislature.—See *Attorney General vs. Brown*, 16 Cal., p. 441. It was held in 8 Cal., p. 435, in the case of *The People vs. Butler*, that: "On the part of the State the prosecution is but a fair and just inquiry into the guilt or innocence of the accused. She can have no interest in convicting the innocent or in releasing the guilty. She stands perfectly impartial between the community and the individual. Prosecuting attorneys should, therefore, do their duty faithfully, but no more. They should never act as employed counsel." Unfinished business to be turned over to successor.—*Cole vs. McKune*, 19 Cal., p. 422. Deputy District Attorney to perform what duties.—*People vs. Megallones*, 15 Cal., p. 426. Allowing assistant discretionary.—*People vs. Blackwell*, 27 Cal., p. 65. What commissions may be had by District Attorney.—*Higby vs. Calaveras Co.*, 18 Cal., p. 176; *People vs. Bircham*, 12 Cal., p. 50. Salary.—*Dorsey vs. Smyth*, 28 Cal., p. 21. See Penal Code Cal.: disclosing fact of indictment found, Sec. 168; proceedings for removal of, id. 771; if fails to attend Court, it may appoint, id. 1130; duty of on an inquisition, id. 1222; dismissal of action on application of, id. 1385; duty of when fugitive from justice arrested, id. 1554; official neglect, id. 176; advise Grand Jury, id. 925; require bench warrant to issue, id. 984. See other duties, Penal Code Cal., in prosecuting criminal actions.

4257. The District Attorney is the legal adviser of the Board of Supervisors. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

Legal  
adviser of  
Supervi-  
sors.

NOTE.—See duties relative to swamp lands, etc., Secs. 3547-3553, ante.

4258. The District Attorney, except for his own services, must not present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

Must not  
act as  
attorney  
for claims  
against  
his own  
county.

NOTE.—See local and special Acts relating to District Attorneys, Stats. 1872, subjects and pages as follows: Alameda, salary of, p. 720; Butte, fees of, p. 799; Colusa, salary Fund of, p. 99; Contra Costa, duty of, p. 514; El Dorado, bond of, pp. 412, 594; El Dorado,

salary of, pp. 594, 794; Inyo, fees of, p. 799; Lake, salary of, p. 441; Lassen, salary of, p. 189; Los Angeles, salary of, p. 158; Placer, fees of, p. 799; Plumas, salary of, p. 733; Sacramento, salary for deputy, p. 863; Sacramento, fees of, p. 863; San Diego, duties of, p. 203; San Luis Obispo, salary of, p. 426; San Joaquin, salary and fees of, p. 874; Santa Barbara, to petition for letters of administration, p. 381; Santa Cruz, when fees charged to county, p. 440; Shasta, fees of, p. 799; Sierra, collection of delinquent taxes, p. 693; Siskiyou, to represent county in investigation of claim of James E. Carr, p. 32; Solano, salary of, p. 624; Tehama, salary of, p. 755; Tuolumne, to petition for letters of administration, p. 381; Duties concerning annexation of new territory to cities and towns, p. 51; see, also, Sec. 4364, post; Salary of, Stats. 1872, p. 653; see Sec. 4330, post, where this amendment is inserted.

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## ARTICLE IX.

### SURVEYOR.

**SECTION 4268.** County Surveyor to make surveys on application made to him.

4269. Surveys of lands in two counties.

4270. Disputes before Court concerning title to lands in two counties.

4271. Courses to be run by true meridian.

4272. Surveyor to employ assistants, when.

4273. Surveyor to transmit plats and field notes to Surveyor General when required.

4274. To assist Surveyor General, when.

4275. When County Surveyor is interested in lands, Court to appoint some other person.

County Surveyor to make surveys on application made to him.

**4268.** The Surveyor must make any survey that may be required by the order of Court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law.

NOTE.—See same references to officers generally, Secs. 220, 920-926, 1014-1016, ante, and notes; and those to the Penal Code Cal.; see, also, note to Sec. 4103, ante. A private survey cannot be said to afford legal evidence.—*Rose vs. Davis*, 11 Cal., p. 133. Descriptions of survey and conventional lines or boundaries.—See *Sneed vs. Woodward*, 30 Cal., p. 430. When one making a survey who is not the official Surveyor may give evidence.—*Doherty vs. Thayer*, 31 Cal., p. 140.

4269. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the Surveyor of any county in which any part of such land is situated, and on such application being made the Surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

Surveys of lands in two counties.

4270. When land, the title to which is in dispute before any Court, is divided by a county line, the Court making an order of survey may direct the order to the Surveyor of any county in which any part of the land is situated.

Disputes before Court concerning title to lands in two counties.

NOTE.—Stats. 1850, p. 170, Sec. 9.

4271. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

Courses to be run by true meridian.

NOTE.—Stats. 1850, p. 170, Sec. 10.

4272. If a party for whom a survey is made does not furnish the chainmen and markers, the Surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistance necessarily employed.

Surveyor to employ assistants when.

NOTE.—Stats. 1850, p. 170, Sec. 12.

4273. Each County Surveyor, immediately after making any survey, except surveys of city or town lots, must make out a copy of the field notes and plat,

Surveyor to transmit plats and field notes to Surveyor General when required.

and transmit the same to the Surveyor General, indicating plainly upon the plat at what point of any line any river or stream or county line is touched or crossed. He must communicate to the Surveyor General such information concerning surveys made by him, and other matters connected with the duties of his office, as may be required.

NOTE.—Stats. 1850, p. 170, Sec. 13.

To assist  
Surveyor  
General,  
when.

4274. Each County Surveyor must, when required, aid and assist the Surveyor General in making surveys within the county.

NOTE.—Stats. 1850, p. 170, Sec. 14.

When  
County  
Surveyor is  
interested  
in lands,  
Court to  
appoint  
some other  
person.

4275. When the County Surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the Court must direct the survey to be made by some disinterested person, and the person so appointed is for that purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the County Surveyor would be entitled to for similar services.

NOTE.—Stats. 1850, p. 170, Sec. 4. For local and special Acts, see Stats. 1871-2, subjects and pages following, relating to County Surveyor. El Dorado, bond of, p. 412; Fresno, to survey county line, p. 891; Mariposa, to survey county line, p. 891; San Francisco, duties concerning opening of Montgomery Avenue, pp. 911-924; San Luis Obispo, fees of, p. 426; Ventura, bond of, p. 488.

## ARTICLE X.

### CORONER.

SECTION 4285. Coroner to hold inquest.

4286. Coroner to bury body, when.

4287. To deliver to County Treasurer property, etc., found on body.

4288. Auditing accounts of Coroner.

4289. Justice of Peace to act as Coroner in certain cases.

4290. Coroner to discharge duties of Sheriff when.

4285. The Coroner must hold inquests as prescribed in Chapter II, Title XII, Part II of THE PENAL CODE. Coroner to hold inquest.

NOTE.—See general references in notes to Secs. 4103 and 4268, ante. Penal Code Cal., Secs. 1510-1519, and notes.

4286. When an inquest is held by the Coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county. Coroner to bury body, when.

4287. The Coroner must, within thirty days after an inquest upon a dead body, deliver to the County Treasurer or the legal representatives of the deceased any money or other property found upon the body. To deliver to County Treasurer property, etc., found on body.

4288. Before auditing or allowing the accounts of the Coroner, the Supervisors must require him to file with the Clerk of the Board a statement in writing, verified by his affidavit, showing: Auditing accounts of Coroner.

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;
2. The disposition made of such property.

4289. If the office of Coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any Justice of the Peace of the county, with the like authority and subject to the same obligations and penalties as the Coroner. Justice of Peace to act as Coroner in certain cases.

4290. In the cases specified in Article IV of this Chapter, the Coroner must discharge the duties of Sheriff. Coroner to discharge duties of Sheriff, when.

NOTE.—See Sec. 4191, ante.

Stats. 1871-2, p. 796.

*An Act to provide for Public Administrators in certain cases.*

[Approved March 30, 1872.]

[Enacting clause.]

SECTION 1. If the Public Administrator of any county of this State fails to qualify, or in person fails to perform the duties of his office, the Coroner of such county shall be ex officio Public Administrator; and in case both Public Administrator and Coroner fail to qualify, or to perform the duties appertaining thereto, the Supervisors shall appoint a suitable person to be Public Administrator; and all laws applicable to the qualification, powers, duties, and compensation of Public Administrator shall apply to the Coroner or appointee of the Supervisors as aforesaid.

SEC. 2. This Act shall take effect and be in force from and after its passage.

Stats. 1871-2, p. 81.

*An Act concerning the attendance of physicians and surgeons in certain cases, and to provide payment for making chemical and post-mortem examinations.*

[Approved February 8, 1872.]

[Enacting clause.]

SECTION 1. The Coroner or other officer holding an inquest upon the body of a deceased person may summon a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach, or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death.

SEC. 2. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases *de lunatico inquirendo*, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the Board of Supervisors, upon the written certificate of the Court or officer requiring such services, as to the extent and supposed value of the same; *provided*, that such certificate shall not be conclusive as to the amount of compensation.

See special and local Acts 1871-2, subjects and pages as follows, relating to Coroner: Contra Costa, Public Administrator to act as, p. 170; El Dorado, bond of, p. 412; Merced, official bond, p. 21; San Francisco,



official oath and bond, p. 403; duties, pp. 403-407; to act as Sheriff, p. 408; to appoint a deputy, p. 408; salary of, p. 409; Ventura, bond of, p. 488.

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ARTICLE XI.

ASSESSORS, TAX COLLECTORS, SCHOOL SUPERINTENDENTS, PUBLIC ADMINISTRATORS, AND COMMISSIONER OF HIGHWAYS.

SECTION 4300. Duties of Assessor.

4301. Duties of Tax Collector.

4302. Duties of School Superintendents.

4303. Duties of Public Administrator.

4304. Duties of Commissioner of Highways, and Road Commissioners and Overseers.

4300. The Assessor must perform such duties as Duties of Assessor. are prescribed in Title IX, Part III of this Code.

NOTE.—See Secs. 3627-3663, 3820-3830, 3839-3862, ante, and notes. See, also, general references in notes to Secs. 4103 and 4268, ante. Local and special Acts are to be found in Stats. 1871-72 on the subjects and pages given below relating to Assessors of county: Butte, salary of, p. 270; El Dorado, bond of, p. 412; El Dorado, salary and fees, p. 894; El Dorado, ex officio Tax Collector, p. 593; El Dorado, salary of, p. 598; El Dorado, fees of, p. 593; El Dorado, bonds of, p. 594; Humboldt, salary of, p. 169; Los Angeles, salary of, p. 159; Mariposa, to be paid portion of salary by the State, p. 899; Napa, salary of, p. 437; Nevada, ex officio Tax Collector, p. 457; Nevada, salary of and for deputies, p. 843; Placer, election of and salaries, pp. 171, 172; San Luis Obispo, salary of, p. 426; Santa Clara, to be Collector of poll taxes, p. 534; Santa Clara, fees of, p. 535; Sierra, to be ex officio Treasurer, p. 582; Sierra, salary as ex officio Treasurer, p. 582; Sierra, to correct certain errors on assessment rolls, p. 692; Tehama, salary and duties of, p. 756; Ventura, bond of, p. 488; Ventura, salary of, p. 489; Duties of concerning assessment of animals, p. 754. These, as well as all other Acts of 1871-72 are subject to construction under Secs. 5-18 and 323-330, ante, in their relation to the Code.

4301. The Tax Collector must perform such duties Duties of Tax Collector. as are prescribed in Title IX, Part III of this Code.

NOTE.—See Secs. 3746-3810, ante, and notes. See, also, general references in notes to Secs. 4103 and 4268, ante. Local and special Acts are to be found in Stats. 1871-72 on the subjects and pages given below relating to Tax Collector: Alameda, duty concerning delinquent taxes, p. 38; El Dorado, election of, p. 377; El Dorado, bonds of, p. 378; Nevada, salary and fees of, p. 844; Placer, relative to collection of personal property and poll tax, p. 656; San Bernardino, fees of, p. 494; Duties of, p. 586; Fees of, pp. 178, 179. How construed, see Secs. 5-18, 323-330, ante, and notes, in their relation to the Code. Fees and salaries under existing laws not disturbed.—See Sec. 4321, post.

Duties of  
School  
Superin-  
tendents.

4302. The School Superintendent must perform such duties as are prescribed in Title III, Part III of this Code.

NOTE.—See Secs. 1542-1550, ante; also, general references in notes to Secs. 4103 and 4268, ante. Local and special Acts of 1871-72, relating to schools, are referred to here for convenience, giving the subject and page of the statute where found. Directors of in Town of Alameda, p. 280; tax, p. 281; Contra Costa, providing deficiencies in funds, pp. 234-235; El Dorado, consolidating Negro Hill School District with Natoma District, Sacramento, p. 475; Mendocino, Ukiah District, tax for, p. 22; Monterey, salary of Superintendent of, p. 316; Sacramento, Grant District, to expend County Fund in repairing, etc., p. 362; San Francisco, to provide for support of, pp. 846-853; San Francisco, classification of, p. 852; San Francisco, separate for the depraved, p. 850; San Joaquin, Superintendent of to apportion moneys, p. 361; San Joaquin, transfer of moneys to General School Fund, p. 361; San José, application of school moneys, p. 352; Santa Barbara, Trustees of School District of to issue bonds, pp. 123, 124; Santa Barbara, Trustees of San Buenaventura District to issue bonds, pp. 395-397; Siskiyou, apportionment of school moneys, p. 281; Siskiyou, School Fund of, p. 2; Siskiyou, support of, p. 2; Siskiyou, transfer of funds, p. 81; Siskiyou, transfer of Indian to School Fund, p. 418; Stanislaus, Superintendent of to have an office, p. 35; Stanislaus, to erect school house in Modesto District, pp. 313-315; Stockton, funding of school debt, p. 557; Stockton, adjustment of value of school property adjacent to City of, p. 530; Sutter, to construct a public school house in Yuba District, pp. 271, 272; Tehama, Red Bluff District, to levy tax for, p. 356; Tehama, Red

Bluff District, Trustees to borrow money, p. 764; Tehama, support of in certain districts, p. 130; Vallejo, School Fund of Township of, p. 523; Vallejo, special tax for, p. 523; Yolo, Plainfield School District, tax for, p. 699; Yolo, Woodland School District, to complete school house in, p. 725; Yolo, Woodland School District, to borrow money, pp. 150, 151; Yolo, Yolo School District, to pay indebtedness of, pp. 274, 275; State and county school funds, how used, p. 362.

**4303.** The Public Administrator must perform such duties as are prescribed in Chapter XIII, Title XI, Part III, of THE CODE OF CIVIL PROCEDURE. Duties of  
Public  
Admin-  
istrator.

NOTE.—See Code Civil Procedure, Secs. 1726-1743, and notes. Local and special Acts are to be found, with subjects, in Stats. of 1871-2, pages as follows: Public Administrators—Contra Costa, to act as Coroner, p. 170; Contra Costa, official bond of, p. 183; Merced, official bond of, p. 21.

Stats. 1871-2, p. 796.

*An Act to provide for Public Administrators in certain cases.*

[Approved March 30, 1872.]

[Enacting clause.]

SECTION 1. If the Public Administrator of any county of this State fails to qualify, or in person fails to perform the duties of his office, the Coroner of such county shall be ex officio Public Administrator; and in case both Public Administrator and Coroner fail to qualify or to perform the duties appertaining thereto, the Supervisors shall appoint a suitable person to be Public Administrator; and all laws applicable to the qualification, powers, duties, and compensation of Public Administrator shall apply to the Coroner or appointee of the Supervisors as aforesaid.

SEC. 2. This Act shall take effect and be in force from and after its passage.

**4304.** The Commissioner of Highways and Road Overseers must perform such duties as are prescribed in Title VI, Part III, of this Code. Duties of  
Commissioner of  
Highways,  
and Road  
Commissioners and  
Overseers.

NOTE.—See Sec. 2646 and others following, ante. See, also, general references in notes to Secs. 4108 and 4290, ante.

## ARTICLE XII.

## CONSTABLES, JUSTICES OF THE PEACE, AND INFERIOR OFFICERS.

## SECTION 4314. Constables to attend Justices' Courts.

4315. Governed by the law prescribing Sheriffs' duties.

4316. Duties of Justices of the Peace.

Constables  
to attend  
Justices'  
Courts.

4314. Constables must attend the Courts of Justices of the Peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a Justice of the Peace of such county or by any competent authority.

NOTE.—See notes generally to Secs. 220, 4103 and 4268, and references there given. Constables may appoint deputies.—Taylor vs. Brown, 4 Cal., p. 188; see Secs. 865, 875-879, ante. Where he may execute process and where not.—See Lowe vs. Alexander, 15 Cal., p. 296. May, in the cases mentioned in Secs. 902-904 of the Code of Civil Procedure, execute process out of township.—Lafontaine vs. Greene, 17 Cal., p. 294. What Constable's deed must recite.—Wiseman vs. McNulty, 25 Cal., p. 230. See Penal Code Cal., "Purchasing judgment," Sec. 97; "Suffering escape," id., Sec. 108; "Refusing to make arrest," id., Sec. 142. See special and local Acts of 1872, subjects and pages following: "Constables," El Dorado, bonds of, p. 595; Calaveras, fees as Tax Collectors, p. 177.

Governed  
by the law  
prescribing  
Sheriffs'  
duties.

4315. All the provisions of Article IV of this Chapter, except the fourth and sixth subdivisions of Section 4176, apply to Constables and govern their powers, duties, and liabilities.

Duties of  
Justices of  
the Peace.

4316. Justices of the Peace must perform such duties as are prescribed in Title XI, Part II, of THE CODE OF CIVIL PROCEDURE, and such other duties as are prescribed by law.

NOTE.—See Code Civil Procedure Cal., "Election, term, jurisdiction."—Secs. 113-117, and notes. Writs of review not to issue.—Sec. 1068; id., nor prohibition, Sec. 1103; nor mandate, Sec. 1085. Purchasing judgment be punished by (Sec. 97, Penal Code Cal.; see id., Secs. 92-98;) magistrate, id., Sec. 806; see Civil

Code Cal., Secs. 70, marriage; 1181, acknowledgments; 265, apprenticing child; 311, order meeting of corporation. Lost property, duties regarding.—See Secs. 8137, 8138, ante. Have jurisdiction of action for damages to real property when the title or right of possession is not involved.—*Cornett vs. Bishop*, 39 Cal., p. 319. See special and local Acts of 1872, subjects and pages following: Justices Courts, San Francisco, amending Act organizing and regulating, p. 758; San Francisco, Justices' summons, p. 94; Justice of the Peace, El Dorado, bonds of, pp. 412, 495; San Francisco, fees of, p. 93; San Francisco, jurisdiction of, p. 84.

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## CHAPTER IV.

### SALARIES AND FEES OF OFFICE.

**SECTION 4328.** Salaries of County Judges and District Attorneys.

4329. Salary of County Judges fixed.

4330. Salary of District Attorneys fixed.

4331. Continuing Acts fixing salaries and fees of county officers.

4332. Officer to perform service when fees are paid.

4333. No charge to be made on proceedings under writ of habeas corpus.

4328. The salaries of County Judges and District Attorneys must be paid monthly from the County Treasury, on the warrants of the County Auditor. Their salaries are fixed in the succeeding sections of this Chapter.

Salaries of  
County  
Judges and  
District  
Attorneys.

4329. The salaries of County Judges are as follows:

Salary of  
County  
Judges  
fixed.

1. Of San Francisco, five thousand dollars;
2. Of Sacramento, three thousand dollars;
3. Of Alameda, twenty-five hundred dollars;
4. Of Nevada and Yuba, twenty-four hundred dollars;
5. Of Amador, Los Angeles, Napa, Placer, San Joaquin, Santa Clara, Solano, and Sonoma, two thousand dollars;

Same.

6. Of Butte, Colusa, Contra Costa, El Dorado, Marin, Mendocino, Merced, Siskiyou, Stanislaus, Sutter, Tehama, and Yolo, fifteen hundred dollars;

7. Of Calaveras, Fresno, Humboldt, Kern, Mariposa, Monterey, Plumas, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, and Tuolumne, twelve hundred dollars;

8. Of Alpine, Klamath, Lake, Lassen, San Diego, San Mateo, Trinity, and Tulare, one thousand dollars; and,

9. Of Del Norte, Inyo, Mono, and San Bernardino, eight hundred dollars.

NOTE.—Salary of El Dorado County Judge.—See Stats. 1871-2, p. 595, Sec. 6. There is a serious question whether this section does not supersede the Act of 1872—so far at least as the amount of salary is concerned. The title of the Act is as follows: "An Act to amend an Act entitled 'An Act to regulate the fees and salaries of officers and defining their duties in the County of El Dorado, and other matters relating thereto,' approved March 5, 1870; approved March 27, 1872." The section referred to reads as follows: "Sec. 6. Section eight of said Act is hereby amended so as to read as follows: 'Section 8. The County Judge shall receive an annual salary of one thousand dollars, payable out of the county Salary Fund.'" The author of this note inclines to the opinion that this section of the Code, so far as the amount of salary is concerned, is the law, and that the County Judge is entitled to fifteen hundred dollars per annum, payable under the above recited Act out of the "Salary Fund."—See Secs. 4331, 4478, 4479, post, and 323-330, ante. Salary of County Judge Ventura County is one thousand dollars.—See Stats. 1871-2, p. 485, Sec. 4.

Stats. 1871-2, p. 99.

*An Act to authorize the Board of Supervisors of Colusa County to levy a special tax.*

[Approved February 13, 1872.]

[Enacting clause.]

SECTION. 1. The Board of Supervisors of Colusa County are hereby authorized and required to levy a special tax of one tenth of one per cent on the taxable property in said county in addition to other taxes

authorized by law, for the purpose of creating a special Fund, to be hereafter known as the County Judge's and District Attorney's Salary Fund of Colusa County.

SEC. 2. Said tax shall be levied at the annual meetings of the said Board of Supervisors at which State and county taxes are authorized to be levied, and shall be collected in the same manner as other county taxes, and the money arising therefrom shall be placed in the Fund created by this Act, and shall be devoted exclusively to the payment of the salary of the County Judge and the salary of the District Attorney of said county; *provided*, that if at the end of each calendar year a surplus thereof shall remain in said special Fund, after the payment of the salaries of the County Judge and District Attorney, such surplus shall be placed in the General Fund of said county.

SEC. 3. This Act shall take effect from and after its passage.

Stats. 1871-2, p. 62.

*An Act fixing the salary of the County Judge of Los Angeles County.*

[Approved February 2, 1872.]

[Enacting clause.]

SECTION. 1. The County Judge of Los Angeles County shall receive a salary of three thousand dollars per annum, in gold coin, payable monthly, out of the Salary Fund of Los Angeles County.

SEC. 2. This Act shall take effect from and after the expiration of the term for which the present incumbent was elected, and shall in no wise affect the compensation of the present County Judge of Los Angeles.

4330. The annual salaries of District Attorneys are as follows: Salary of District Attorneys fixed.

*First*—Of San Francisco, five thousand dollars.

*Second*—Of Sacramento, thirty-six hundred dollars.

*Third*—Of Los Angeles, three thousand dollars.

*Fourth*—Of San Joaquin, Santa Clara, and Alameda, twenty-five hundred dollars.

*Fifth*—Of Butte, seventeen hundred dollars.

*Sixth*—Of Nevada, two thousand dollars; and of Colusa, eighteen hundred dollars.

*Seventh*—Of Sonoma, eighteen hundred dollars.

Same.

*Eighth*—Of El Dorado, Placer, Amador, Marin, Contra Costa, Tuolumne, Napa, Yolo, Yuba, and Santa Cruz, fifteen hundred dollars.

*Ninth*—Of Mariposa, Merced, San Mateo, Shasta, Siskiyou, Stanislaus, Tehama, Fresno, Kern, Mendocino, San Luis Obispo, Santa Barbara, Tulare, San Diego, and Plumas, twelve hundred dollars.

*Tenth*—Of Monterey, Sutter, Trinity, Sierra, and Calaveras, one thousand dollars.

*Eleventh*—Of Inyo and Lassen, eight hundred dollars.

*Twelfth*—Of Del Norte, Humboldt, Klamath, Lake, and San Bernardino, seven hundred dollars.

*Thirteenth*—Of Alpine, six hundred dollars.

*Fourteenth*—Of Mono, five hundred dollars.

NOTE.—This section was amended so as to read as printed in the text, by Act of March 28, 1872.—See Stats. 1871-2, p. 653. The following are the remaining sections of said Act:

SECTION 2. With relation to the Acts passed at the present session of the Legislature, section forty-three hundred and thirty of the Political Code must be construed as though it had been passed on the last day of the present session.

SEC. 3. This Act and section forty-three hundred and thirty of the Political Code as herein amended, shall be in force and effect from and after the passage of this Act.

For Ventura County, see, *id.*, p. 489, Sec. 16.

For fees and salaries of Solano County officers:

Stats. 1871-2, p. 624.

*An Act to better define the duties and fix the compensation of certain officers of Solano County.*

[Approved March 27, 1872.]

Enacting clause.]

SECTION 1. The Sheriff of Solano County shall be *ex officio* Collector of all licenses in said county, and receive therefor the fees now allowed by law, and be allowed as Jailer a salary of twelve hundred (\$1,200) dollars per annum, which shall be paid monthly out of the County Treasury of said county.

SEC. 2. The County Clerk of said county shall receive for all services required of him as County Clerk and *ex officio* Clerk of the District Court, County



Court, Probate Court, Board of Supervisors, and Board of Equalization, a salary of four thousand dollars per annum, which salary shall be in full for all services required of him as aforesaid, and it shall be paid monthly out of the County Treasury. He shall collect and safely keep all fees of whatever kind or nature allowed him by law for services rendered by him in his several official capacities, and upon the first Monday of each and every month shall pay the same over to the County Treasurer of said county, and shall at the same time make out and file with said Treasurer a full and accurate statement, under oath, of all fees, of whatever kind or nature, received in his several official capacities for the preceding month.

SEC. 3. The District Attorney of said county shall receive a salary of two thousand and two hundred dollars per annum, which shall be paid monthly out of the Treasury of said county.

SEC. 4. It shall be the duty of the County Auditor of said county, on the first Monday of each and every month, to draw a warrant upon the County Treasurer, in favor of the officers herein named, for the amount of salary due each month under the provisions of this Act; and said warrants shall be paid in gold and silver coin on presentation to the County Treasurer.

SEC. 5. This Act shall take effect from and after its passage; and all Acts and parts of Acts, so far as they conflict with the provisions of this Act, are hereby repealed.

This Act is inserted because it fixes the salary of the District Attorney of Solano County, which by oversight of the Legislature was omitted in the text.

4331. Nothing in this Code not contained in this Chapter affects any of the provisions of the statutes relating to the compensation, salaries, or fees of county or township officers; but all such statutes are recognized as continuing in force, notwithstanding the provisions of this Code, except so far as they are affected by or are inconsistent with the provisions of this Chapter.

Continuing  
Acts fixing  
salaries  
and fees of  
county  
officers.

NOTE.—This section retains in force all existing laws regulating fees and salaries of office except those in this Chapter fixed. The salaries of State and judicial officers superior to County Judges though recapitulated in the Code are continued unchanged. It is under this section that the view of the salary of the County

Judge of El Dorado County, given in note to Sec. 4329, ante, is sustained. The subjects and pages of all the local and special Acts of 1872 are found as follows:

**SALARY.**—Alameda, of officers of, p. 720; Butte, of Auditor of, p. 709; id., Treasurer of, p. 709; Calaveras, portions of supplementary Act of 1870, to regulate fees of office, etc., to apply, p. 910; El Dorado, District Attorney of, p. 794; id., offices of, pp. 592-595; id., Sheriff as ex officio Treasurer, p. 379; Lake, District Attorney of, p. 441; Lassen, District Attorney of, p. 189; Los Angeles, County Judge of, p. 62; Nevada, Assessor and deputies of, p. 843; id., Clerk and deputy of, p. 843; id., Collector of, p. 844; id., Recorder and deputies of, p. 844; id., Sheriff and deputies of, p. 843; Plumas, District Attorney of, p. 783; Sacramento, County Clerk as Clerk of Board of Supervisors, p. 721; Sacramento City, Assessor of, p. 697; id., officers and employes of Fire Department, p. 867; San Bernardino, officers of, pp. 490-496; San Diego, officers of, p. 199; San Francisco, Board of Public Works of, p. 923; id., Coroner of, p. 409; id., Engineer of canal through Channel street and Mission Creek, p. 935; id., Sheriff's deputies of, p. 905; San Joaquin, Clerk of, p. 875; id., District Attorney of, p. 875; id., Recorder of, p. 876; id., salaries, how paid, p. 877; id., Sheriff and deputies of, p. 875; id., Superintendent of Schools of, p. 874; id., Supervisors of, p. 874; id., Treasurer of, p. 875; San Luis Obispo, officers of, pp. 425-427; id., payable quarterly, p. 427; Sierra, Assessor of as ex officio Treasurer, p. 582; Solano, officers of, p. 624; Sonoma, Auditor of, p. 583; Stockton, City of, officers of, pp. 612, 613; Tehama, Assessor of, p. 756; id., District Attorney of, p. 755; id., Deputy County Clerk of, p. 755; Trinity, Supervisors of, p. 380; Ventura, officers of, p. 48; Yuba, Superintendent of Schools of, p. 36; Clerk of Supreme Court of, p. 37; District Attorneys, p. 653.

**FEES.**—Butte, of District Attorney of, p. 799; id., witnesses and jurors in, p. 233; Inyo, of District Attorney of, p. 799; Kern, of traveling fees of Sheriff, p. 141; Los Angeles, of Grand Jurors in, p. 37; Mendocino, of Recorder of, p. 17; Monterey, of Sheriff of, p. 419; Nevada, of Tax Collector of, p. 844; Placer, of District Attorney of, p. 799; Sacramento, of District Attorney of, p. 863; San Bernardino, of officers of, pp. 490-496; San Francisco, of City and County Attorney, p. 46; id., Justices of the Peace, p. 93; id., Sheriff, pp. 776-778; San Joaquin, of District Attorney, p. 874; id., of Treasurer, p. 874; id., of certain officers to be paid into County Treasury, p. 876; San Luis Obispo, of

Surveyor, p. 426; Santa Clara, of Assessor, p. 535; id., County Clerk, pp. 212-214; Santa Cruz, of Sheriff, pp. 331, 332; Shasta, of District Attorney, p. 799; Ventura, of officers of, p. 489; Amending Act of 1870, regulating, p. 140; Clerks of County, for filing certificates of election of corporation, p. 444; Clerks of Courts of record for indexing names, p. 80; Clerks of Probate Courts, p. 131; Judges and Clerks of elections, p. 219; Jurors, Grand and trial, p. 188; Secretary of State, p. 392; Tax Collectors and Auditors, pp. 178, 179; Treasurers of County, for collection of assessments for reclamation purposes, p. 841.

4332. The officers mentioned in this Title are not in any case, except for the State or county, to perform any official services, unless upon the prepayment of the fees prescribed for such services, except as in the succeeding section provided by law; and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

Officer to perform service when fees are paid.

NOTE.—The Board of Supervisors, under this section, must semi-annually cause to be certified, without fee or charge therefor, to the Controller of State, the statement required to be made by Subd. 22 of Sec. 4046, ante.

4333. No fee or compensation of any kind must be charged or received by any officer for duties performed or services rendered in proceedings upon habeas corpus.

No charge to be made on proceedings under writ of habeas corpus.

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## CHAPTER V.

### OTHER COUNTY CHARGES.

SECTION 4343. County charges to be audited.

4344. Examination of county charges.

4343. Accounts for county charges of every description must be presented to the Board of Supervisors

County charges to be audited.

to be audited, as prescribed in Article III, Title II, Part IV, of this Code.

Examina-  
tion of  
county  
charges

4344. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this Title;

2. The compensation of the District Attorney, and all expenses necessarily incurred by him in criminal cases arising within the county;

3. The compensation allowed by law to Sheriffs and Constables for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for service of subpoenas issued by District Attorneys, and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law;

4. The expenses necessarily incurred in the support of persons charged with or convicted of crimes and committed therefor to the County Jail;

5. The sums required by law to be paid to Grand Jurors and indigent witnesses in criminal cases;

6. The accounts of the Coroner of the county for such services as are not provided to be paid otherwise;

7. All charges and accounts for services rendered by any Justice of the Peace for services in the examination of persons charged with crime not otherwise provided for by law;

8. The necessary expenses incurred in the support of County Hospitals, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

9. The contingent expenses necessarily incurred for the use and benefit of the county;

10. Every other sum directed by law to be raised for any county purpose under the direction of the Board of Supervisors, or declared to be a county charge;

11. The salary of the Commissioner of Highways must be paid at the close of each quarter.

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## TITLE III.

### THE GOVERNMENT OF CITIES.

#### CHAPTER I. *Cities as Bodies Corporate.*

##### II. *Executive Powers.*

##### III. *Legislative Powers.*

##### IV. *Judicial Powers.*

##### V. *Certain Statutes relating to Cities and Towns and existing Corporations continued.*

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### CHAPTER I.

#### CITIES AS BODIES CORPORATE.

##### SECTION 4354. General powers.

4355. Distribution of powers.

4356. City declared by Legislature.

4357. Boundaries, how changed.

4358. Petition to Supervisors.

4359. Undertaking for expenses of election.

4360. Supervisors to order an election.

4361. Notice of election, etc.

4362. Ordinance approving such annexation.

4363. Order of Supervisors, etc.

4364. Expenses of election, how paid.

4365. Certified copy of order to be transmitted to Secretary of State and County Recorder.

4366. Act to fix time of the first election.

4367. First election, when and how held.

4368. Who are city electors.

4369. Officers, terms, elections, and appointments.

4370. Officers of a city.

4371. Direct taxes.

4372. Condemnation of private property for city use.

4373. Vacancies in office.

4374. Official oaths and bonds.

General powers.

4354. A city is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this Title or in special laws.

Distribution of powers.

4355. Every city has legislative, executive, and judicial power. Its legislative power is vested in a Common Council; its executive power in a Mayor and his subordinate officers; and its judicial power in a Police Court.

City declared by Legislature.

4356. Every subdivision of a county not exceeding in extent six square miles, with not less than two thousand inhabitants, with its metes and bounds fixed and defined, and declared by Act of the Legislature to be a "municipal corporation," is a city with the powers conferred by this Title.

NOTE.—This Title does not at present affect the existing statutes governing any incorporated city or town in the State. It is unnecessary here to repeat the argument in favor of this Title, or set forth the great benefits which would flow from a uniform system of municipal government. Were all the cities in the State being conducted under this general law, the force of the example and the uniformity of construction which would necessarily obtain for every provision would save much expense, in litigation and otherwise, to the entire State. Under this section, all that is necessary is for the Legislature to declare the citizens of a certain town, describing it by metes and bounds, to be a municipal corporation, and to provide for its first officers (see Sec. 4366, post), and it is then a city under this Title. If any city now incorporated desires to come in under this Title, in addition to the sections declaring it a municipal corporation, a section repealing all existing Acts relating to it as an incorporated city or town is all that is requisite.

Boundaries, how changed.

4357. The boundary of a city may be changed by an Act of the Legislature, on petition of a majority of the Common Council, presented in pursuance of a city ordinance, or, as hereinafter provided, by the Board of Supervisors.

4358. Whenever the residents of a county adjoining the boundary of a city therein desire to become incorporated therewith, they must present to the Board of Supervisors of their county a petition therefor, signed by at least ten citizens of the territory proposed to be annexed, giving the metes and bounds of such territory, praying the Board to order an election therefor.

Petition to Supervisors.

4359. The petition must be accompanied with an undertaking in the sum of five hundred dollars, with sureties satisfactory to the Board, conditioned for the payment of all the expenses of the election in case a majority of the votes cast thereat is against such annexation, or the same otherwise fails, as hereinafter provided.

Undertaking for expenses of election.

4360. On receiving the petition and undertaking the Board of Supervisors must order an election to be held by the voters of the territory proposed to be annexed, on a day not less than ten nor more than thirty thereafter, at a specified place within such territory, to determine whether the territory must be annexed to the city or not.

Supervisors to order an election.

4361. Notice of such election must be given by advertisement. The provisions of this Code relating to general elections apply to this election. All persons entitled to vote at general elections who have been bona fide residents of the territory proposed to be annexed from the time of the first presentation of the petition, and continue to reside therein, are entitled to vote. The ballots must be substantially in the following form: "Annexation to (naming the city) Yes." "Annexation to (naming the city) No."

Notice of election, etc.

4362. If a majority of the votes polled are in favor of annexation, the County Clerk must forthwith notify the Mayor or other chief officer of the city thereof,

Ordinance approving such annexation.

who must without delay present the same to the Council or other municipal legislative authority of the city, who must by ordinance approve or disapprove of such annexation, and report the same to the Board of Supervisors.

Order of Supervisors, etc.

4363. The Board of Supervisors upon receiving the report must by ordinance declare the territory described in the petition and the inhabitants thereof annexed to the city, and thenceforth the territory and inhabitants are a part of the city and subject to all its laws, ordinances, and regulations, and entitled to all the benefits, advantages, and privileges pertaining thereto as though originally included in its corporate limits.

Expenses of election, how paid.

4364. If the annexation is completed as herein provided, all expenses of the election must be paid by the city, in the same manner as other election expenses are paid; if it fails by reason of a majority of the votes at such election being against annexation, or the rejection of the same by the municipal authorities, the expenses must be paid by the parties to the undertaking; and in case of their neglect or refusal to pay the same an action must be brought by the District Attorney of the county, in the name of the people of the State of California, upon such undertaking, to compel the payment thereof.

Certified copy of order to be transmitted to Secretary of State and County Recorder.

4365. On the passage by the Boards of Supervisors of the ordinance of annexation, the Clerk of the Board must transmit certified copies thereof to the Secretary of State and the County Recorder, to be filed in their respective offices.

NOTE.—This and Secs. 4358-4364, inclusive, were suggested by the Act of February 1, 1872, following, and its provisions were incorporated herein. This Title not being in force with regard to any incorporated city or town until by legislative enactment it is brought in under it, the Act from which they are taken is given



in extenso. The Legislature has the constitutional power to create but one kind of a corporation: that is a "municipal corporation"—all others must be formed under general laws; when a city exists under this Title, the general provisions here for annexing territory to it will govern, until such time as the Act following governs.

Stats. 1871-2, pp. 50-52.

*An Act to enable the inhabitants of territory adjacent to any city in this State to annex the same thereto.*

[Approved February 1, 1872.]

[Enacting clause.]

SECTION 1. Whenever the inhabitants of any portion of territory in the same county and adjoining the boundary of any incorporated city or town in this State shall desire to be annexed to and become incorporated with said city or town, they may present a petition therefor to the Board of Supervisors of the county. Said petition shall be signed by at least ten taxpayers of the territory proposed to be annexed; shall contain an accurate description of such territory; shall pray said Board to order an election as hereinafter provided, and shall be accompanied by an undertaking in the sum of five hundred dollars, with sureties satisfactory to said Board, conditioned for the payment of all the expenses of such election, in case a majority of the votes at such election shall be against such annexation, or the same shall otherwise fail, as hereinafter provided.

SEC. 2. Immediately upon receiving such petition and undertaking, it shall be the duty of said Board of Supervisors to order an election to be held in the territory proposed to be annexed, on a day not less than ten nor more than thirty days thereafter, at a place within said territory to be specified in the order, to determine whether said territory shall be annexed to said city or town. They shall give notice of such election by advertisement in two newspapers that they shall deem most likely to give such notice to all parties to be affected thereby, and shall provide, in the same manner as for a general election, for the holding thereof, and all laws relating to the conducting of general elections shall apply, so far as applicable, to such special elections, and all persons entitled to vote at general elections and who have been bona fide residents of the territory proposed to be annexed, from the time of the first presentation of such petition to the Board

of Supervisors and yet continue such residents, and none others, shall be entitled to vote thereat; *provided*, that whenever the territory which it is proposed to so annex consists of the whole or a portion of an incorporated city or town, such vote shall be by the electors of the whole of said incorporated city or town. The ballots at said election shall be substantially in the following form: "Annexation to (naming the city or town), Yes." "Annexation to (naming the city or town), No."

SEC. 3. Immediately after the close of said election it shall be the duty of the Inspector to canvass the votes and to make a certificate of the result, and return the same, with the poll lists and ballots, without delay, to the Clerk of the Board of Supervisors. If a majority of the voters at such election shall have voted in favor of such annexation, it shall be the duty of the Clerk forthwith to give notice thereof to the Mayor or other chief officer of such city or town, whose duty it shall be, without delay, to present the same to the Council or other municipal authority of said city or town. The said Council or other municipal authority shall thereupon, by ordinance, approve or disapprove of such annexation, and shall transmit a copy of said ordinance to said Board of Supervisors.

SEC. 4. It shall be the duty of the Board of Supervisors, upon receiving a copy of said last mentioned ordinance approving said annexation, forthwith, by ordinance, to declare the territory described in said petition annexed to said city or town; and thenceforth the said territory shall be a part of said city or town, and be subject to all the laws, ordinances, and regulations thereof, and be entitled to all the benefits, advantages, and privileges pertaining thereto, the same as if it had been originally included in the corporate limits of said city or town; and all laws or ordinances before applicable to said territory, or that if enforced would conflict herewith or with the jurisdiction of said city or town over said annexed territory, so far as they apply to said territory, are hereby repealed.

SEC. 5. If the said annexation shall be completed as herein provided, all the expenses of said election shall be paid by said city or town in the same manner that other election expenses are required by law to be paid therein. If the same shall fail by reason of a majority of the votes at such election being cast against such annexation, or the rejection of the same by the municipal authorities of said city or town, said expenses shall be paid by the parties to the undertaking above

mentioned; and in case of their neglect or refusal to pay the same, an action shall be brought by the District Attorney of said county, upon such undertaking, to compel the payment thereof. Such actions shall be in the name of the people of the State of California.

SEC. 6. Immediately upon the passage by the Board of Supervisors of the ordinance of annexation, it shall be the duty of the Clerk of said Board to transmit certified copies of such ordinance to the Secretary of State and the Recorder of Deeds of such county, to be filed by them in their respective offices.

SEC. 7. All laws or parts of laws that conflict herewith, so far as they so conflict, are hereby repealed.

SEC. 8. This Act shall take effect immediately.

The question has been asked whether the election here is to be holden under the general election law of the Codes. There can be no doubt of it from the reading of Sec. 2 of this Act with Sec. 4361, ante, of this Code. The Code section is taken from the statutes, and the Code section makes the Code election provisions applicable.

4366. The Act of the Legislature declaring a city to be a "municipal corporation" must fix a day for the first election of city officers, and fix the number of members of the "Common Council" to be elected for the first year.

Act to fix time of the first election.

NOTE.—See note to Sec. 4356, ante.

4367. Notice of the first election of city officers must be given by the County Judge of the county, by publishing the same in a newspaper published in the city for four weeks successively, designating the officers to be elected, the polling places, and the officers of election. The returns must be made to the County Judge, who must count and declare the vote, and issue certificates of election.

First election, when and how held.

NOTE.—See note to Secs. 4356 and 4366, ante.

4368. The qualified electors of the city who have resided within the city limits for thirty days next preceding the election are qualified to vote at all city elections.

Who are city electors.

Officers,  
terms,  
elections,  
and  
appoint-  
ments.

4369. The Common Council must, during the first year, by ordinance, fix the term of office of all elective officers, and the time when they must be elected, and provide for the appointment of other necessary officers, including Assessor and Collector of Taxes, City Clerk, City Attorney, and Treasurer, and fix their terms and amount of their bonds.

Officers of a  
city.

4370. The elective officers of cities are: A Mayor, a Marshal, a Police Judge, and a Common Council consisting of not less than three members. They must be electors of the city, and qualify by taking the statutory oath of office, and except the first officers elected hold office for a term to be fixed by the Common Council, not exceeding two years.

Direct  
taxes.

4371. The direct taxes imposed by the Common Council in any one year must not exceed two per centum of the valuation of property within the city.

Condemna-  
tion of  
private  
property  
for city use.

4372. Whenever it becomes necessary for the city to take private property for the purposes of laying out or altering streets or alleys, and the Council cannot agree with the owner thereof as to the price to be paid, the Council may direct proceedings to be taken under Title VII, Part III of THE CODE OF CIVIL PROCEDURE, to procure the same.

Vacancies  
in office.

4373. If any person elected to a city office removes from the city, absents himself for more than thirty days without leave from the Council, or fails to qualify within ten days after election, his office is vacant.

NOTE.—Stats. 1850, p. 91, Sec. 33.

Official  
oaths and  
bonds.

4374. All city officers, before entering upon their duties, must take the oath of office. The Marshal, Attorney, Clerk, Assessor, and Treasurer must also give a bond, with sureties to be approved by the Mayor, payable to the corporation by its corporate

name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and a like bond may be required of any officer whose office is created by an ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond; and upon his failure so to do his office must be deemed vacant.

NOTE.—Stats. 1850, p. 91, Sec. 30.

## CHAPTER II.

### EXECUTIVE POWERS.

#### SECTION 4385. Executive officers of a city.

4386. Powers of Mayor.

4387. Accounts and demands, how audited and paid.

4388. Mayor President of the Common Council.

4389. Duties of City Marshal.

4390. Duties of Assessor.

4391. Duties of City Attorney.

4392. Duties of Treasurer.

4393. Duties of Clerk.

4385. The executive officers of a city are the Mayor, Marshal, and such officers for the assessment, collection, auditing, safe keeping, and disbursing the revenue and keeping the records and journals of the city, as the Common Council may provide.

Executive  
officers of  
a city.

#### 4386. The Mayor has power:

1. To nominate, and with the consent of the Common Council to appoint, all non-elective officers of the city provided for by the Common Council, including Assessor and Collector of Revenue, City Attorney, Secretary of the Council, and City Treasurer;

Powers of  
Mayor.

2. To suspend, and with the consent of the Common Council, remove any non-elected officer, stating in the suspension or removal the cause thereof;

3. To cause the ordinances of the city to be execu-

Same. ted, and to supervise the discharge of official duty by all subordinate officers;

4. To communicate to the Common Council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city, with such recommendations as he may deem proper;

5. To recommend to the Common Council such measures connected with the public health, cleanliness, and ornament of the city and the improvement of the government and finances as he deems expedient;

6. To approve all ordinances of the Common Council adopted by it, and in case the same do not meet his approbation to return the same, with his objections, within five days after he receives the same.

NOTE.—Stats. 1850, p. 87, Sec. 22.

Accounts and demands, how audited and paid.

4387. All accounts and demands against said city must be audited by the President of the Common Council, and no money must be drawn from the City Treasury, unless upon the certificate of the President, by order of the Council. The certificate must be drawn upon the Treasurer of the city, and must specify the Fund out of which the same is payable. The Treasurer must pay the same out of any money in his hands belonging to such Fund.

NOTE.—Stats. 1850, p. 87, Sec. 19.

Mayor President of the Common Council.

4388. The Mayor is the President of the Common Council, must sign the journals thereof, decide by his voice all tie votes, must sign the warrants on the City Treasurer, and is the keeper of the City Seal.

Duties of City Marshal.

4389. The City Marshal, in addition to the duties prescribed by the Common Council, must execute and return all process issued by the Police Judge, or directed to him by any legal authority, and attend upon the Police Court regularly. He may appoint one or more deputies; and must arrest all persons guilty of

a breach of the peace or for the violation of any city ordinance, and bring them before the Police Judge for trial, and has superintending control over the city police; and, until otherwise provided by ordinance, must perform all duties of Collector of city taxes.

4390. The Assessor, in addition to the duties prescribed by the Common Council, must make out, within such time as the Common Council orders, a correct list of all the taxable property within the city limits, with the valuation thereof, which list certified by him must be returned to the Common Council. The mode of making out the list and of ascertaining the value of property, and of collecting all taxes, is the same as prescribed in this Code for assessing and collecting the State tax.

Duties of  
Assessor.

NOTE.—Stats. 1850, p. 87, Sec. 26.

4391. The City Attorney must attend to all suits, matters, and things in which the city may be legally interested; to give his advice or opinion in writing whenever required by the Mayor or Common Council, and do and perform all such things touching his office as by the Common Council may be required of him.

Duties of  
City  
Attorney.

NOTE.—Stats. 1850, p. 87, Sec. 27.

4392. The Treasurer must receive all moneys that come to the city either from taxation or otherwise, and pay the same out on the certificate of the President of the Common Council, and do and perform all other acts as are prescribed for him by the Common Council. He must on the first days of January, April, July, and October of each year, make out and present to the Mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the Mayor must cause to be published.

Duties of  
Treasurer.

4393. The City Clerk is Clerk of the Common Council; must keep the journal of their proceedings

Duties of  
Clerk.

and all records of the city; he must keep the accounts of the city, and countersign all warrants on the City Treasurer; keep a true account thereof and of the financial condition of the city, and do such other things as the Common Council may by ordinance provide.

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### CHAPTER III.

#### LEGISLATIVE POWERS.

##### SECTION 4403. Common Council.

4404. Wards, and number of.

4405. First meeting.

4406. Quorum.

4407. May make rules, etc.

4408. Additional powers of Common Council.

4409. Street improvements, how made.

4410. To grant authority to gas and water companies.

4411. Reservations by cities.

4412. Contract for gas and water.

4413. Restrictions and conditions to be imposed.

4414. Ordinance, how vetoed, and how passed over veto.

Common  
Council.

4403. The Common Council consists of not less than three citizens of the city, elected one from each of the wards. The Mayor is the presiding officer thereof.

Wards, and  
number of.

4404. The Common Council has power to divide the city into a convenient number of wards, fix the boundaries thereto, and may change the same from time to time as they see fit, having regard to the number of white male inhabitants, so that each ward contains as near as may be the same number of inhabitants. The number of wards of any city must not exceed the number of Councilmen to which the city is entitled; and when a city has been so divided the Councilmen must be elected from the several wards respectively, according to the number of inhabitants.

NOTE.—Stats. 1850, p. 87, Sec. 9.



4405. The members of the Common Council must assemble within five days after their election, and choose some suitable person as Clerk. In case of the absence of the Mayor they may elect a President pro tempore, who has all the powers and must perform all the duties of President. They must, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the Mayor at any time.

First meeting.

NOTE.—Stats. 1850, p. 87, Sec. 10.

4406. A majority of the members of the Common Council constitutes a quorum to do business; but a less number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the Council may, by ordinance, prescribe.

Quorum.

NOTE.—Stats. 1850, p. 87, Sec. 10.

4407. The Common Council is the judge of the qualification, elections, and returns of their own members and the other officers elected under the provisions of this Title. They may determine contested elections; they may provide rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and, with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause; they must keep a journal of their proceedings, and at the desire of any member must cause the yeas and nays to be taken and entered on any question; and their proceedings must be public.

May make rules, etc.

4408. The Common Council has power:

1. To create the offices of City Clerk, City Attorney, Assessor, and Collector, and such other offices as may be necessary, and prescribe their duties and fix their compensation.

Additional powers of Common Council.

NOTE.—Stats. 1850, p. 87, Sec. 29.

Same.

2. To establish and fix the salaries of the Mayor, Police Judge, and other city officers, and also fix a tariff of fees for the officers entitled to such, designating the fees allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by the Common Council.

NOTE.—Stats. 1850, p. 87, Sec. 20.

3. To manage the finances and property of the city.

4. To regulate the streets, wharves, piers, and chutes in the city, and the use thereof.

5. To establish or authorize slaughter houses and markets, and regulate the same.

6. To provide for lighting, watering, and cleaning the city, and protecting it against fire.

7. To license and regulate hacks, cabs, carts, omnibuses, railway cars, and all other vehicles, butchers, porters, pawnbrokers, peddlers, showmen, and junk shop keepers, theaters, and all other places of public amusement.

8. To provide for licensing any or all business not prohibited by law, and fix the amount of license tax for the same.

9. To regulate the keeping and use of animals, and the keeping and use of gunpowder and other dangerous substances.

10. To suppress gaming, gambling houses, and other disorderly houses, nuisances of every description, and all kinds of vice and immorality.

11. To prohibit the burial of the dead within the city, except at such places and in such manner as the Common Council may determine.

12. To establish and regulate a Police Department.

13. To establish and regulate a Fire Department.

14. To impose penalties for the violation of ordinances; but no single penalty must exceed a fine of

five hundred dollars, or imprisonment for ten days, or *Same.* both.

15. To impose and appropriate fines, penalties, and forfeitures for breaches of ordinances.

16. To make by-laws and ordinances not repugnant to the Constitution and the laws of the United States or of this State.

17. To require any land or building to be cleansed at the expense of the owner or occupant, and upon his default, may do the work and assess the expense upon the land or building.

18. To establish a Board of Health to prevent the introduction and spreading of disease, or to ordain and adopt for the government of the city the "Quarantine" or "Health Regulations," provided by this Code for San Francisco or Sacramento.

19. To levy and collect taxes, to lay out, extend, alter, or widen streets and alleys, and make appropriations for any object of city expenditures.

20. To erect and maintain Poor Houses and Hospitals, and pass such by-laws and ordinances for the regulation of the Police as they may deem necessary. All ordinances must be published in the manner prescribed by the Common Council.

NOTE.—For California decisions see Cal. Digest, Vol 1, Title "Municipal Corporations," p. 660, et seq.

4409. Whenever the owners of a major part of the property fronting on any street or avenue desire to improve such street by paving the same, or constructing sewers, or otherwise, the Mayor and Council may make such improvement at the expense of all the owners of property on the street, which expense must be in proportion to the number of feet owned by each.

Street  
improvements, how  
made.

NOTE.—Stats. 1850, p. 87, Sec. 34.

4410. The Common Council, by ordinance, approved by the Mayor, may grant to any gas or water

To grant authority to gas and water companies.

company the privilege of laying down pipes in the streets and alleys of such city for supplying gas and water for the streets and buildings thereon, for a term not exceeding twenty-five years.

NOTE.—Stats. 1870, p. 815, Sec. 1, modified.

Reservations by cities.

4411. In exercising the authority mentioned in preceding section the Common Council must reserve the right to grant similar privileges to other companies, and require the laying down of the pipes to be under the reasonable direction of the city authorities, and to be so laid as to do no injury to the proper use of the paving, planking, or macadamizing of the streets and alleys, nor to private property situate thereon.

NOTE.—Stats. 1870, p. 815, Sec. 2.

Contract for gas and water.

4412. The Common Council may contract with gas and water companies for supplying the streets and public buildings with all gas and water necessary for their proper use; the rates to be paid therefor must not be fixed for a term exceeding five years, and the city authorities must reserve the right to abrogate such contract whenever gas or water is offered to be supplied at two thirds of such fixed contract price.

NOTE.—Stats. 1870, p. 815, Sec. 3.

Restrictions and conditions to be imposed.

4413. In granting authority to lay down pipes, and in contracting for gas and water, the Common Council must impose such restrictions and conditions, and provide for such locations and construction of gas and water works and pipes as to work the least possible public or private inconvenience, and provide for enforcing such restrictions and conditions.

NOTE.—Stats. 1870, p. 815, Sec. 3. The Act of 1870, p. 815, is unrepealed, and applicable to all cities not organized under this Title, as also all city charters and Acts incorporating cities and towns.

4414. Every ordinance passed by the Common Council must before it becomes effective be presented to the Mayor for his approbation. If he approve it, he must sign it; if not, he must return it, with his objections in writing, to the Common Council, who must cause the same to be entered upon its journals, and proceed to reconsider the same. If after such consideration two thirds of all the members of the Common Council elect shall agree to pass the same, it becomes an ordinance. In all such cases the votes must be taken by yeas and nays, and the names of the members voting for and against the same must be entered on the journal. If any ordinance is not returned by the Mayor within ten days (Sundays excepted) after it is presented to him, the same becomes effective, as if the Mayor had signed it.

Ordinance, how vetoed, and how passed over veto.

NOTE.—Stats. 1850, p. 87, Sec. 21. See Sec. 4386, Subd. 6, ante; and see for construction, Sec. 4464, post.

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## CHAPTER IV.

### JUDICIAL POWERS.

SECTION 4424. Police Judge; vacancy, how filled.

4425. Police Court Clerk.

4426. Criminal jurisdiction.

4427. General and exclusive jurisdiction.

4428. When Justice of the Peace to act as Police Judge.

4429. Terms.

4430. Form of proceedings.

4431. Trials in Police Courts.

4432. Civil practice in Police Courts.

4424. The City Police Judge must be a qualified elector of the city. Any vacancy in the office of Police Judge must be filled by an appointee of the Mayor, made with the advice and consent of the Common Council.

Police Judge; vacancy, how filled.

Police  
Court  
Clerk.

4425. The Police Judge may appoint a Clerk, with such compensation, by way of salary or fees, as the Common Council may by ordinance provide.

Criminal  
jurisdiction.

4426. The Police Court has exclusive jurisdiction of the following public offenses committed within the city boundaries:

1. Petit larceny;
2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill;
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment; and,
4. Of proceedings respecting vagrants, lewd, or disorderly persons.

NOTE.—Stats. 1865-6, p. 192, Sec. 3—Oakland City.

General  
and  
exclusive  
jurisdiction.

4427. The Police Court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city, both civil and criminal;
2. Of any action for the collection of taxes and assessments levied for city purposes; or for the erection or improvement of any school house or public buildings; for the laying out or opening or improving any public street or sidewalk, lane, alley, bridge, wharf, pier, or dock; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made and ordered by the city within its limits, when the amount of the tax or assessments sought to be collected against the person assessed is less than three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action;

3. Of an action for the collection of money due to Same. the city, or from the city to any person, when the amount sought to be collected, exclusive of interest and costs, is less than three hundred dollars;

4. For the breach of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city; and upon all bonds given upon any appeal taken from the judgment of the Court in any action above named where the amount claimed, exclusive of costs, is less than three hundred dollars;

5. For the recovery of personal property belonging to the city, when the value of the property (exclusive of the damages for the taking or detention) is less than three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city.

NOTE.—Stats. 1865-6, p. 193, Sec. 4—Oakland.

4428. In all cases in which the Judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree; and in case of his sickness or inability, the Police Judge may call in a Justice of the Peace residing in the city to act in his place and stead.

When  
Justice of  
the Peace  
to act as  
Police  
Judge.

4429. Police Courts are always open for the trans- Terms. action of business, except on non-judicial days.

NOTE.—Stats. 1865-6, p. 1195, Sec. 11.

4430. Proceedings in the Police Court in criminal actions for offenses not triable in such Courts must be had in conformity with the provisions of Part II, Title III, Chapter VII of THE PENAL CODE.

Form of  
proceed-  
ings.

Trials in  
Police  
Courts.

4431. Proceedings in the Police Courts in criminal actions triable in such Courts are regulated in Part II, Title XI, Chapter I of THE PENAL CODE.

Civil  
practice in  
Police  
Courts.

4432. Proceedings in the Police Courts in civil actions are regulated by Part II, Title XII of THE CODE OF CIVIL PROCEDURE.

NOTE.—It was thought best to make no provision for the incorporation of towns other than herein provided. No town or city of less than two thousand inhabitants really needs corporate powers.

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## CHAPTER V.

### CERTAIN STATUTES RELATING TO CITIES AND TOWNS AND EXISTING CORPORATIONS, CONTINUED.

SECTION 4442. Certain statutes continued in force.

Certain  
statutes  
continued  
in force.

4442. Nothing in this Code affects any of the provisions of "An Act to authorize and direct the municipal authorities of the several cities and incorporated towns of this State to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this State by the Act of Congress entitled an Act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March twenty-four, eighteen hundred and sixty-eight;" or of "An Act to authorize and direct the County Judges of the several counties of this State to execute certain trusts in relation to the town lands granted to the unincorporated towns in this State by the Act of Congress entitled an Act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March thirtieth, eighteen hundred and sixty-eight;" but such Acts are continued in force.



## TITLE IV.

LIABILITIES OF COUNTIES AND CITIES FOR INJURIES  
TO PROPERTY BY MOBS OR RIOTS.

## CHAPTER I.

SECTION 4452. Municipal corporations responsible for certain acts.

4453. Such actions must be tried, where.

4454. When action must be commenced.

4455. Warrant to be issued for payment of damages; tax therefor.

4456. Plaintiff not to recover if damage resulted from his own neglect.

4452. Every municipal corporation is responsible for injuries to real or personal property situate within its corporate limits done or caused by mobs or riots.

Municipal corporations responsible for certain acts.

NOTE.—Stats. 1868, p. 418, Sec. 1; see, also, Sec. 4000, ante.

4453. Actions for damages under the preceding section must be tried in the county in which the property injured is situated.

Such actions must be tried, where.

4454. All actions herein provided for must be commenced within one year after the act complained of is committed.

When action must be commenced.

NOTE.—Stats. 1868, p. 419, Sec. 6.

4455. On the certificate of the presiding officer or of the Clerk of the Court in which the judgment is rendered, the Board of Supervisors of the county or the legislative authority of the city must by ordinance direct and cause to be issued a warrant for the payment thereof on the General Fund, and the same must be paid in its regular order, as other warrants of the municipal corporation are paid; and must at the proper times levy and cause to be collected a tax on

Warrant to be issued for payment of damages; tax therefor.

the taxable property of such municipal corporation for the payment of such warrant within a period of not more than three years.

NOTE.—Stats. 1868, p. 419, Sec. 2.

Plaintiff  
not to  
recover if  
damage  
resulted  
from his  
own neglect

4456. The plaintiff in any action authorized by this Title must not recover if it appears upon the trial that the damage complained of was occasioned or in any manner aided, sanctioned, or permitted by his carelessness or negligence.

# PART V.

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OF THE DEFINITION AND SOURCES OF LAW—  
EFFECT AND PUBLICATION OF THE  
CODES, AND THE EXPRESS RE-  
PEAL OF STATUTES.



# PART V.

## OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EX- PRESS REPEAL OF STATUTES.

### TITLE I. DEFINITION AND SOURCES OF THE LAW.

#### II. EFFECT OF THE CODES.

#### III. PUBLICATION OF THE CODES, AND STATUTES CONTINUED IN FORCE.

#### IV. EXPRESS REPEAL OF STATUTES.

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## TITLE I.

### DEFINITION AND SOURCES OF THE LAW.

SECTION 4466. Definition of law.

4467. How expressed.

4468. Common law, when rule of decision.

4466. Law is a solemn expression of the will of the supreme power of the State. Definition of law.

4467. The will of the supreme power is expressed: How expressed.

1. By the Constitution;
2. By statutes.

4468. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the Courts of this State. Common law, when rule of decision.

NOTE.—Act of April 18th, 1850; Stats. 1850, p. 219.

## TITLE II.

## EFFECT OF THE CODES.

**SECTION 4478.** Construction of the Codes with relation to the laws passed at the present session.

4479. Laws passed at present session prevail.

4480. Construction of Codes with relation to each other.

4481. Conflicts between Titles, which to prevail.

4482. Conflicts between Chapters, which to prevail.

4483. Conflicts between Articles, which to prevail.

4484. Conflicting sections of the same Title, which to prevail.

Construction of the Codes with relation to the laws passed at the present session.

4478. With relation to the laws passed at the present session of the Legislature, THE POLITICAL CODE, CIVIL CODE, CODE OF CIVIL PROCEDURE, and PENAL CODE, must be construed as though each had been passed on the first day of the present session.

Laws passed at present session prevail.

4479. If the provisions of any law passed at the present session of the Legislature contravene or are inconsistent with the provisions of either of the four Codes, the provisions of such law must prevail.

NOTE.—This section is but another form of stating the proposition contained in the preceding one. It is placed here not because it is necessary, but to convey to the layman the idea which the preceding section conveys to the professional reader.

Construction of Codes with relation to each other.

4480. With relation to each other, the provisions of the four Codes must be construed (except as in the next two sections provided) as though all such Codes had been passed at the same moment of time, and were parts of the same statute.

Conflicts between Titles, which to prevail.

4481. If the provisions of any Title conflict with or contravene the provisions of another Title, the provisions of each Title must prevail as to all matters and questions arising out of the subject matter of such Title.

Conflicts between Chapters, which to prevail.

4482. If the provisions of any Chapter conflict with or contravene the provisions of another Chapter

of the same Title, the provisions of each Chapter must prevail as to all matters and questions arising out of the subject matter of such Chapter.

4483. If the provisions of any Article conflict with or contravene the provisions of another Article of the same Chapter, the provisions of each Article must prevail as to all matters and questions arising out of the subject matter of such Article.

Conflicts between Articles, which to prevail.

4484. If conflicting provisions are found in different sections of the same Chapter or Article, the provisions of the sections last in numerical order must prevail, unless such construction is inconsistent with the meaning of such Chapter or Article.

Conflicting sections of the same Title, which to prevail.

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## TITLE III.

### PUBLICATION OF THE CODES.

SECTION 4494. Codes not published as part of the statutes.

4494. The Codes passed at this session of the Legislature must not be published as part of the statutes passed at this session, but provision must be made by law for their publication.

Codes not published as part of the statutes.

NOTE.—It was the first intention of the Commission to have provided under this Title for the publication of the Codes; but it was, after reflection, deemed advisable to present a bill for that purpose. As soon as the publication is made such provisions would have no office to perform, and ought not, for that reason, to be made part of a work intended to be permanent. Such bill was prepared, passed, approved on the 22d of March, 1872, and published on pp. 481-484 of the Stats. 1871-2. Under Sec. 13 of this Act the Codes are published under the supervision of the Commission.

## TITLE IV.

## EXPRESS REPEAL OF STATUTES.

SECTION 4504. Repeal of repealed statutes not to imply that they were in force.

4505. Express repeal of statutes to be provided for.

Repeal of repealed statutes not to imply that they were in force.

4504. The repeal of any statute or part of a statute heretofore repealed must not be construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

Express repeal of statutes to be provided for.

4505. The express repeal of statutes will be provided for by a separate statute, and such statute, after its passage, must be construed in the same manner, and must have like effect as if it were part of this Code.

NOTE.—The bill here mentioned was prepared and presented to the Legislature, but failed of passage under the rules.—See note to this section in Vol. II, Civil Code, p. 590.

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Approved March 12th, 1872.

NEWTON BOOTH,

Governor.



# APPENDIX.

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## ACTS OF CONGRESS:

EMBRACING THE LAWS OF NATURALIZATION AND THE  
AUTHENTICATION OF RECORDS BETWEEN THE  
STATES.

CONSTITUTION OF THE UNITED STATES AND INDEX.

CONSTITUTION OF CALIFORNIA AND INDEX.



# NATURALIZATION LAWS.

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Act approved April 14th, 1802.  
Act approved March 26th, 1804.  
Act approved March 3d, 1813.  
Act approved July 30th, 1813.  
Act approved March 22d, 1816.  
Act approved May 26th, 1824.  
Act approved May 24th, 1828.  
Act approved July 17th, 1862.  
Act approved July 14th, 1870.  
Treaties respecting naturalization.

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*An Act to establish a uniform rule of Naturalization, and to repeal the Acts heretofore passed on that subject.*

[Approved April 14th, 1802.]

## SECTION 1.

*What aliens may become citizens.*

1. Renunciation of foreign allegiance.
2. Oath to support Constitution and renouncing allegiance.
3. Residence, character, and attachment to the United States.
4. Renunciation of title of nobility. Alien enemy. Resident in 1795.  
Decree in naturalization to be recorded. Residents in 1798.

## SECTION 2.

Repealed May 24th, 1828.

## SECTION 3.

*What Courts have jurisdiction to naturalize.*

## SECTION 4.

*Children of naturalized citizens are citizens. Of non-residents and proscribed persons.*

## SECTION 5.

[Repeals all former Acts.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:*

What  
aliens may  
become  
citizens of  
United  
States,  
and how.

SECTION 1. That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

Renuncia-  
tion of  
foreign  
allegiance.

1. That he shall have declared on oath or affirmation, before the Supreme, Superior, District, or Circuit Court of some one of the States, or of the territorial districts of the United States, or a Circuit or District Court of the United States, three years at least before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly by name the prince, potentate, State, or sovereignty whereof such alien may at the time be a citizen or subject.

NOTE.—Two years prior to admission is sufficient. See Section 4 of Act of May 26th, 1824, post. An alien becomes a citizen of the United States, not by filing his declaration of intention to become such, but he acquires his full rights of citizenship when he has taken the final oath.—See *Orosco vs. Galisardo*, 22 Cal., p. 83.

Oath to  
support  
Constitu-  
tion and  
renouncing  
allegiance.

2. That he shall at the time of his application to be admitted, declare, on oath or affirmation, before some of the Courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State, or sovereignty whatever, and particularly by name the prince, potentate, State, or sovereignty whereof he was before a citizen or subject, which proceedings shall be recorded by the Clerk of the Court.

3. That the Court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the State or Territory where

such Court is at the time held one year at least; and it shall further appear to their satisfaction that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; *provided*, that the oath of the applicant shall in no case be allowed to prove his residence.

Residence in United States before admission; moral character, and attachment to the Federal Constitution.

4. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or State from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the Court to which his application shall be made, which renunciation shall be made and recorded in the said Court; *provided*, that no alien who shall be a native citizen, or subject of any country, State, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States; *provided*, also, that any alien who was residing within the limits and under the jurisdiction of the United States before the twentieth day of January, seventeen hundred and ninety-five, may be admitted to become a citizen on due proof made to some one of the Courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least immediately preceding his application within the State or Territory where such Court is at the time held, and on his declaring, on oath or affirmation, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly by name the prince, potentate, State, or sovereignty whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the Court that during said term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happi-

Renunciation of title of nobility.

Alien enemies.

Aliens resident in 1795.

Decrees in naturalization to be recorded by Clerk of Court.

ness of the same; and where the alien applying for admission to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or State from which he came; on his moreover making in the Court an express renunciation of his title or order of nobility before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the Court, shall be recorded by the Clerk thereof; and *provided*, also, that any alien who was residing within the limits and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, seventeen hundred and ninety-five, and the eighteenth day of June, seventeen hundred and ninety-eight, may within two years after the passage of this Act be admitted to become a citizen without a compliance with the first condition above specified.

Aliens resident in 1798.

[Section 2 of this Act was repealed by Act of May 24th, 1828.]

SEC. 3. And whereas, doubts have arisen whether certain Courts of record in some of the States are included within the description of District or Circuit Courts: *Be it further enacted*, That every Court of record in any individual State having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a District Court within the meaning of this Act; and every alien who may have been naturalized in any such Court shall enjoy, from and after the passage of the Act, the same rights and privileges as if he had been naturalized in a District or Circuit Court of the United States.

What Courts have jurisdiction to naturalize aliens.

NOTE.—See cases *Ex Parte Knowles*, 5 Cal., p. 300, cited in note to Sec. 4, Act of July 14th, 1870, post; also Federal and State Constitutions, post, in this Appendix.

Children of citizens by naturalization are citizens.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said States under the laws thereof, being under the age of twenty-one years at

the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States; *provided*, that the right of citizenship shall not descend to persons whose fathers have never resided within the United States; *provided*, also, that no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britian during the late war, shall be admitted a citizen as aforesaid without the consent of the Legislature of the State in which such person was proscribed.

Children of non-residents.

Proscribed persons.

SEC. 5. *And be it further enacted*, That all Acts heretofore passed respecting naturalization be and the same are hereby repealed.

Repeal of all former Acts.

NOTE.—Story on the Constitution, Vol. 1, Secs. 1102-1104; Subd. 4, Sec. 8, Art. I, Fed. Const. The power to naturalize seems to have been conceded to the Federal Government by the States without objection. See Journals of Convention, pp. 220 and 257. This power is exclusive, and consequently there is no reservation of concurrent power to the States over the subject. The right of suffrage has by some State Constitutions and otherwise been permitted to persons foreign born who are not citizens by naturalization. Sec. 1, Art. VI of the Illinois Constitution, for instance, provides that "every white male inhabitant of the age aforesaid (21 years) who may be a resident of the State at the time of the adoption of this Constitution shall have the right of voting as aforesaid," etc. This gives persons not citizens of the United States the right to vote in Illinois, but does not give them the right to vote in this State. This has given rise to some confusion and embarrassments to immigrants to this State from Illinois. The right to *vote* is one thing, and *citizenship* another; the latter includes the first, but the first does not include the latter. See Art. IV, Sec. 2, Fed. Const., "Rights of citizens of the several States exercised by the citizens of each State."

By the second clause of Article VIII of the TREATY OF GUADALUPE HIDALGO, it is provided with regard to citizens of Mexico then established in California and other Territories acquired by the United States that: "Those who shall prefer to remain in the said Territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States; but they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty, and those who shall remain in the said Territories after the expiration of that year without having declared their intention to retain the character of Mexicans, shall be considered to have elected to have become citizens of the United States." In *People vs. Naglee*, 1 Cal., p. 232, the question of citizenship under this Article was considered to a certain extent by Justice Bennett. Subsequently, however, in the recent case of *The People vs. De la Guerra*, 40 Cal., p. 311, the question was very ably and elaborately argued by counsel and carefully considered by the Court in an able opinion by Justice Temple, arriving at the conclusion that the respondent by residing in the Territory of California and not electing to retain his citizenship of Mexico became and is a citizen of the United States, citing in support *Scott vs. Sandford*, 19 How., p. 448; *Am. Ins. Co. vs. Canter*, 1 Peters, p. 511. This decision, concurred in by Justices Wallace and Crocket, Justice Rhodes concurring in the judgment and Justice Sprague expressing no opinion, must be taken as a settlement of any question which may arise under this Article of the Treaty so far as the State is concerned. As yet, however, there has been no determination of it by or even a question in regard to it presented to the Supreme Court of the United States.

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*Act in addition to the above Act.*

[Approved March 26, 1804.]

SECTION 1.

*Free white alien resident in 1802, and after 1798.*

SECTION 2.

*Widow and children of aliens who die before perfecting naturalization are citizens.*

SECTION 1. That any alien, being a free white person, who was residing within the limits and under the juris-



diction of the United States at any time between the eighteenth day of June, seventeen hundred and ninety-eight, and the fourteenth day of April, eighteen hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States without a compliance with the first condition specified in the first section of the Act entitled "An Act to establish a uniform rule of naturalization, and to repeal the Acts heretofore passed on that subject."

Free white alien resident in 1802, and after 1798.

SEC. 2. *And be it further enacted,* That when any alien who shall have complied with the first condition specified in the first section of said original Act, and who shall have pursued the directions prescribed in the second section of the said Act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law.

Widow and children of aliens who die before perfecting naturalization are citizens.

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*An Act for the regulation of seamen on board the public and private vessels of the United States.*

[Approved March 3d, 1813.]

\*.\* *Previous sections are not applicable.*

SECTION 12.

*What continued residence in the United States necessary for citizenship.*

SECTION 18.

*Forging certificate of citizenship a felony.*

SECTION 12. *And be it further enacted,* That no person who shall arrive in the United States, from and after the time this Act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission as aforesaid, have resided within the United States.

What continued residence in United States necessary for citizenship.

NOTE.—The words "without being at any time during the said five years out of the territory of the

United States" were contained in this section as it was originally enacted, but were stricken out by the Act of June 26th, 1848, post.

Forging certificate of citizenship a felony.

SEC. 13. *And be it further enacted*, That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, any certificate or evidence of citizenship referred to in this Act; or shall pass, utter, or use as true, any false, forged, or counterfeited certificate of citizenship; or shall make sale or dispose of any certificate of citizenship to any person other than the person for whom it was originally issued, and to whom it may of right belong, every such person shall be deemed and adjudged guilty of felony; and on being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labor for a period not less than three or more than five years, or be fined in a sum not less than five hundred dollars, nor more than one thousand dollars, at the discretion of the Court taking cognizance thereof.

*Act supplementary to former Acts.*

[Approved July 30, 1813.]

SECTION 1.

*Though enemies, aliens resident in 1812 may become citizens. Removal not affected.*

Though enemies, aliens resident in 1812 may become citizens.

SECTION 1. That persons resident within the United States, or the Territories thereof, on the eighteenth day of June, eighteen hundred and twelve, who had before that day made a declaration according to law of their intention to become citizens of the United States, or who by the existing laws of the United States were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies at the time, and in the manner prescribed by the laws heretofore passed on that subject; *provided*, that nothing herein contained shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to

Removal of alien enemies not affected.

law, of any alien enemy at any time previous to the actual naturalization of such alien.

*Act relative to evidence in case of Naturalization.*

[Approved March 22, 1816.]

SECTION 1.

[Repealed May 24, 1828.]

SECTION 2.

*Persons resident prior to 1802 and after 1798. Proof other than certificate of naturalization.*

SECTION 2. *Provided and be it enacted*, That nothing herein contained shall be construed to exclude from admission to citizenship any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, seventeen hundred and ninety-eight, and the fourteenth day of April, eighteen hundred and two, and who having continued to reside therein without having made any declaration of intention before a Court of record as aforesaid, may be entitled to become a citizen of the United States according to the Act of the 26th of March, 1804, entitled "An Act in addition to an Act, entitled 'An Act to establish a uniform rule of naturalization, and to repeal the Acts theretofore passed on that subject.'" Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the Court that the applicant was residing within the limits and under the jurisdiction of the United States before the 14th day of April, 1802, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record

Persons  
resident  
prior to 1802  
and after  
1798.

Proof  
otherwise  
than by  
certificate  
of declara-  
tion.

as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the Court admitting the applicant, otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

NOTE.—From this it appears that the testimony of two witnesses at least is required. See 7 Hill, R. (New York), p. 137, and such is the universal acceptance of the law and practice of the Courts.

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*Act in further addition to former Acts.*

[Approved May 26, 1824.]

SECTION 1.

*Free white alien minors resident. Declaration must be made at the time.*

SECTION 2.

*Previously obtained certificate valid.*

SECTION 3.

*Bona fide declaration of intention valid.*

SECTION 4.

*Declaration of intention; what sufficient before admission.*

Free white  
alien  
minors  
resident.

SECTION 1. That any alien, being a free white person, and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the first condition of the first section of the Act to which this is in addition, three

years previous to his admission; *provided*, such alien shall make the declaration required therein at the time of his or her admission, and shall further declare on oath, and prove to the satisfaction of the Court, that for three years next preceding it has been the bona fide intention of such alien to become a citizen of the United States, and shall, in all other respects, comply with the laws in regard to naturalization.

Declaration must be made at the time.

SEC. 2. *And be it further enacted*, That no certificate of citizenship or naturalization heretofore obtained from any Court of record within the United States, shall be deemed invalid in consequence of an omission to comply with the requisition of the first section of the Act entitled "An Act relative to evidence in case of naturalization," passed the 22d day of March, 1816.

Previously obtained certificate valid.

SEC. 3. *And be it further enacted*, That the declaration required by the first condition, specified in the first section of the Act to which this is in addition, shall, if the same has been bona fide made before the Clerks of either of the Courts in the said condition named, be as valid as if it had been made before the said Courts respectively.

Bona fide declaration of intention valid.

SEC. 4. *And be it further enacted*, That a declaration by an alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the Act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said Act or in any subsequent Act to the contrary notwithstanding.

Declaration of intention; what sufficient before admission.

NOTE.—See note to Sec. 1 of Act of 1802, ante.

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*Act amending former Acts.*

[Approved May 24th, 1828.]

SECTION 1.

*Repeals certain sections of other Acts.*

## SECTION 2.

*Free white aliens resident in 1812. What proof required, etc.*

[Sec. 1 repeals Sec. 2 of Act of April 14th, 1802, as also Sec. 1 of Act of March 22d, 1816.]

Free white  
aliens  
resident in  
1812.

What  
sufficient  
proof  
where no  
certificate  
of declara-  
tion is  
made.

•SECTION 2. *And be it further enacted*, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States between the 14th day of April, 1802, and the 18th day of June, 1812, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen; *provided*, that whenever any person, without a certificate of such declaration of his intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the Court that the applicant was residing within the limits and under the jurisdiction of the United States before the 18th day of June, 1812, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the Court admitting the applicant, otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

*Act to define pay and emoluments of certain officers of the army, and for other purposes.*

[Approved July 17th, 1862.]

[Secs. 1 to 20 inclusive do not affect naturalization.]

SECTION 21.

*In what case alien United States soldiers honorably discharged may become citizens. One year's residence only required.*

SECTION 21. Any alien of the age of twenty-one years and upwards, who has enlisted, or shall enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become a citizen of the United States, and he shall not be required to prove more than one year's residence within the United States previous to his application to become a citizen; and the Court admitting such alien shall in addition to such proof of residence and good moral character as is now proved by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

In what cases aliens who entered the United States army, and were honorably discharged, are entitled to naturalization.

One year's residence only sufficient.

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*An Act to amend the Naturalization Laws, and to punish crimes against the same, and for other purposes.*

[Approved July 14th, 1870.]

SECTION 1.

*Taking false oath, etc., is perjury; penalty.*

SECTION 2.

*Doing certain acts declared felony; penalty.*

SECTION 3.

*Using fraudulent certificate, etc., misdemeanor.*

SECTION 4.

*Applies to all proceedings. Jurisdiction of offenses.*

Taking  
false oath,  
etc., is  
perjury;  
penalty.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any oath, affirmation, or affidavit, shall be made or taken under or by virtue of any Act or law relating to the naturalization of aliens, or in any proceedings under such Acts or laws, and any person or persons taking or making such oath, affirmation, or affidavit, shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall upon conviction thereof be sentenced to imprisonment for a term not exceeding five years and not less than one year, and to a fine not exceeding one thousand dollars.*

Doing  
certain  
acts  
declared  
felony, and  
penalty.

SEC. 2. *And be it further enacted, That if any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge, or counterfeit any oath, affirmation, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law or Act relating to or providing for the naturalization of aliens; or shall utter, sell, dispose of, or use as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper, or proceeding, as aforesaid; or sell or dispose of to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any*



such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or if any person shall obtain, accept, or receive any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law: every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the Court. And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise, or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal. Same.

Using  
fraudulent  
certificates,  
etc., misde-  
meanor.

SEC. 3. *And be it further enacted,* That any person who shall knowingly use any certificate of naturalization heretofore granted by any Court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence, or has been or shall be issued by the clerk, or any other officer of the Court, without any appearance and hearing of the applicant in Court, and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the Court taking cognizance of the same.

Applies to  
all proceed-  
ings:  
jurisdiction  
of offenses.

SEC. 4. *And be it further enacted,* That the provisions of this Act shall apply to all proceedings had or taken, or attempted to be had or taken, before any Court in which any proceedings for naturalization shall be commenced, had or taken, or attempted to be commenced; and the Courts of the United States shall have jurisdiction of all offenses under the provisions of this Act, in or before whatsoever Court or tribunal the same shall have been committed.

NOTE.—Stats. at Large, 1869-70, pp. 254, 255. The remaining sections of this Act do not relate to naturalization. Congress alone has the power to pass laws regulating the naturalization of foreigners. See Const. U. S., post, Art. I, Sec. 8, Subd. 4, and note. It was held in the case *Ex Parte Knowles*, 5 Cal., p. 300, that the Supreme Court of this State had no power to naturalize; although the Congress of the United States had made it the exercise of a judicial power, it could not confer such power on a State Court; still, State Courts having common law jurisdiction could naturalize. The State Constitution has, since that decision, been amended, and confers upon the County Courts jurisdiction to issue naturalization papers. See State Constitution, post, Art. VI, Sec. 7, and note. The District Courts having common law jurisdiction, have, by the Act of Congress, power to naturalize foreigners, but this juris-

diction must be voluntarily exercised, and cannot be enforced by mandamus. See Title "Election," Sec. 1097, and note, ante.

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## TREATIES RESPECTING NATURALIZATION.

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|----------------|------------------------|
| 1. PRUSSIA.    | 7. BELGIUM.            |
| 2. BAVARIA.    | 8. CHINA.              |
| 3. MEXICO.     | 9. GREAT BRITAIN.      |
| 4. BADEN.      | 10. GREAT BRITAIN.     |
| 5. WURTEMBERG. | 11. SWEDEN AND NORWAY. |
| 6. HESSE.      | 12. AUSTRO-HUNGARY.    |
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The following Treaties on the subject of naturalization have been ratified between the United States and foreign powers:

Treaty between the United States of America and the King of Prussia; concluded at Berlin, February 22d, 1868; proclaimed by the President of the United States, May 27th, 1868. See Stats. at Large, 1867-8, p. 115.

Treaty between the United States and the King of Bavaria concerning the citizenship of emigrants; concluded at Munich, May 26th, 1868; ratified, September 18th, 1868; proclaimed, October 8th, 1868. See Stats. at Large, 1867-8, p. 147.

Convention between the United States of America and the Republic of Mexico, for regulating the citizenship of emigrants; concluded, July 10th, 1868; proclaimed, February 1st, 1869. See Stats. at Large, 1868-9, p. 223.

Treaty between the United States and the Grand Duchy of Baden; naturalization; concluded, July 19th, 1868; exchanged, December 7th, 1869; proclaimed, January 10th, 1870. See Stats. at Large, 1869-70, p. 329.

Treaty between the United States and the Kingdom of Württemberg; naturalization; concluded, July 27th, 1868; proclaimed, March 7th, 1870. See Stats. at Large, 1869-70, p. 333.

Treaties  
respecting  
naturaliza-  
tion.

Convention between the United States of America and the Grand Duchy of Hesse concerning the citizenship of emigrants; ratified, July 23d, 1869; proclaimed by the President, August 31st, 1869. See Stats. at Large, 1869-70, p. 338.

Convention between the United States and Belgium; naturalization; concluded, November 16, 1868; exchanged, July 10, 1869; proclaimed, July 30, 1869. See Stats. at Large, 1869-70, p. 341.

Treaty between the United States and China, additional Articles to Treaty ratified and exchanged June 18, 1868; proclaimed, February 5, 1870; provides, that nothing therein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States. See Stats. at Large, 1870-1, p. 392, Art. VI.

Convention between the United States and Great Britain, naturalization, concluded May 13th, 1870; exchanged, August 10th, 1870; proclaimed, September 16th, 1870. See Stats. at Large, 1870-1, p. 399.

Supplemental convention between the United States and Great Britain concerning the renunciation of naturalization in certain cases; signed, February 23d, 1871; ratified, March 24th, 1871; ratifications exchanged, May 4th, 1871; proclaimed, May 5th, 1871. See Stats. at Large, 1871, p. 15.

Convention and protocol between the United States of America and Sweden and Norway, naturalization; signed, May 26th, 1869; ratified, December 17th, 1870; exchanged, June 14th, 1871; proclaimed, January 12th, 1872. See Stats. at Large, 1871-2, p. 19.

Convention between the United States of America and the Austro-Hungarian Monarchy, naturalization; signed, September 20th, 1870; ratified, March 24th, 1871; ratifications exchanged, July 14th, 1871; proclaimed, August 1st, 1871. See Stats. at Large, 1871-2, p. 43.

NOTE.—All the authorities and references of importance on the subject of naturalization will be found under appropriate heads in the notes to the Federal and State Constitutions, post, in this Appendix.

## AUTHENTICATION OF RECORDS BETWEEN THE STATES.

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Act approved May 26th, 1790.

Act approved March 27th, 1804.

Act approved March 2d, 1849.

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*An Act to prescribe the mode in which the Public Acts, Records, and Judicial Proceedings in each State shall be authenticated so as to take effect in every other State.*

[Approved May 26, 1790.]

## SECTION 1.

*Acts of Legislature, records, etc., how authenticated.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:*

SECTION 1. That the Acts of the Legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the Courts of any State shall be proved or admitted in any other Court within the United States, by the attestation of the Clerk and the seal of the Court annexed, if there be a seal, together with the certificate of the Judge, Chief Justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every Court within the United States, as they have, by law or usage, in the Courts of the State from whence the said records are or shall be taken.

Acts of  
Legisla-  
ture,  
records,  
etc., how  
authenti-  
cated.

*Act supplementing the above entitled Act.*

[Approved March 27, 1804.]

## SECTION 1.

*Office books, etc., not pertaining to Courts, how proved.*

## SECTION 2.

*Applies to Acts, records, etc., of Territories as well.*

Office  
books, etc.,  
not  
pertaining  
to Courts,  
how  
proved.

SECTION 1. That from and after the passage of this Act, all records and exemplifications of office books, which are or may be kept in any public office of any State not appertaining to a Court, shall be proved or admitted in any other Court or office in any other State, by the attestation of the keeper of said records or books, and the seal of his office thereto annexed, if there be a seal, together with the certificate of the presiding Justice of the Court of the county or district, as the case may be, in which such office is or may be kept, or of the Governor, the Secretary of State, the Chancellor, or the Keeper of the Great Seal of the State, that the said attestation is in due form and by the proper officer; and the said certificate, if given by the presiding Justice of a Court, shall be further authenticated by the Clerk or Prothonotary of the said Court, who shall certify under his hand and the seal of his office, that the said presiding Justice is duly commissioned and qualified; or if the said certificate be given by the Governor, the Secretary of State, the Chancellor, or Keeper of the Great Seal, it shall be under the Great Seal of the State in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every Court and office within the United States, as they have by law or usage in the Courts or offices of the State from whence the same are or shall be taken.

Applies to  
Acts,  
records,  
etc., of  
Territories  
as well.

SEC. 2. All the provisions of this Act, and the Act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, Courts, and officers of the respective Territories of the

United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, Courts, and offices of the several States.

*An Act to amend an Act for authenticating certain records.*

[Approved March 2d, 1849.]

SECTION 1.

*Custodian of laws, etc., of foreign government; how to certify the same.*

SECTION 1. That it may and shall be lawful for the keepers or persons having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of one of the heads of one of the departments, the Solicitor of the Treasury, or the Commissioner of the General Land Office, to authenticate the same under his hand and seal, and certify the same to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents; and when the same shall be certified by an American Minister or Consul, under his hand and seal of office, or by a Judge of one of the United States Courts, under his hand and seal, to be true copies of the originals, the same shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file the same in his office, and cause it to be recorded in a book to be kept for that purpose. A copy of said laws, judgments, orders, decrees, journals, correspondence, or other public documents so filed, or of the same so recorded in said book, may be read in evidence in all Courts where the title to land claimed by or under the United States may come into question, equally with the originals thereof.

Custodian  
of laws,  
etc., of  
foreign  
Government; how  
to certify  
the same.

NOTE.—A judgment rendered in one State upon which an action is brought in another State was, in the case of *Thompson vs. Morrow*, 1 Cal., p. 428, held to be

sufficiently exemplified for the purpose of the action, by being certified to by the Clerk, under the seal of the Court, and the presiding Judge thereof, in turn, certifying that such attestation is in due form of law—this being held a compliance with the statute. Where these two offices are consolidated, or, in other words, where the functions of the two are performed by one person, as is the case with the Surrogate in New York, it was held only necessary for the certificate to state the facts made necessary by this Act to entitle it to official recognition.—See *Low vs. Burrows*, 12 Cal., p. 182. It is the rule that the unwritten law of a foreign country is a fact to be proved, as any other fact, by the testimony of experts; but the statutory law must be proved by the law itself, or by an exemplified copy; such is the law of this State.—See Code of Civil Procedure, Sec. 1902, not only with regard to foreign laws, but the laws of a sister State, and it is so in New York Laws of 1869, Chap. 883; *Balt. and Ohio R. R. Co. vs. Glenn*, 28 Maryland Rep., p. 287; *Gardner vs. Lewis*, 7 Gill. id, p. 377; *DeLobry vs. DeLaistre*, 2 Harris and Johnson, id, p. 191. How attested by our statutes, see Code of Civil Procedure, Secs. 1905, 1906; its effect, id, Sec. 1913. The construction of the Constitution and Statutes of one State, given them by the highest judicial tribunal thereof, is to be followed by the Courts of other States. *Franklin vs. Twogood*, 25 Iowa Rep., p. 520.



# CONSTITUTION OF THE UNITED STATES.

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## P R E A M B L E.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

NOTE.—*The Constitution of the United States* went into operation on the first Wednesday in March, 1789.—*Owing vs. Speed*, 5 Wh., p. 420. THE DUTIES of *protection* to the people by the Government, and *allegiance* on the part of the people to the Government, are reciprocal.—*Reid vs. U. S.*, 3 Qu. L. J., p. 122; s. c., Dev. C. C., p. 21. It is supreme over all the departments of Government; anything done unauthorized by it is unlawful.—*Dodge vs. Wolsey*, 18 H., p. 347, *Wayne, J.*; s. c., 6 McL., p. 142.—Made by and for the people.—*McCullough vs. Maryland*, 4 Wh., p. 316. And they are entitled to its protection.—*U. S. vs. Moore*, 3 Cr., p. 160, n, *Cranch, J.* Act of Congress pursuant to its authority is the supreme law of the land.—*Sinnot vs. Davenport*, 22 H., p. 227; *U. S. vs. Hart*, Pet. C. C., p. 390. Revolution did not dissolve colonial charter to private corporation.—*Dart. College vs. Woodward*, 4 Wh., p. 518. Inhabitants of territory ceded to the United States become entitled to rights, etc., of citizens.—*Am. Ins. Co. vs. Canter*, 1 Pet., p. 511; *People vs. De la Guerra*, 40 Cal., p. 389. Inhabitants of State admitted into the Union can claim no rights not secured to citizens of all.—*Permal vs. First Municipality*, 8 H., p. 589. State Constitutional Convention cannot assume legislative

powers, the Legislature being in session at same time.—*Beach's Case*, 2 Cong. Elect. Cas., p. 391; and see *Seagr's Case*, id., p. 426. General Government has exclusive power under an unqualified grant, when its exercise by State Government would be inconsistent therewith.—*Golden vs. Prince*, 3 W. C. C., p. 313. Prohibitions in amendments to the Constitution were intended as restrictions on the Federal Government and not on the authority of the States.—*Fox vs. Ohio*, 5 H., p. 411; same principle, *Smith vs. Maryland*, 18 H., p. 71; *Withers vs. Buckley*, 20 H., p. 84; *Griffing vs. Gibb*, 1 McA., p. 212; *Pervear vs. Commonwealth*, 5 Wall, p. 475. No State law can divest rights and privileges secured by the Constitution of the United States.—*U. S. vs. Rathbone*, 2 Pa., p. 579. Rules of constitutional construction.—*Adams vs. Story*, 1 Pa., p. 79. A constitutional provision restricting the powers of a State Legislature will not be extended by construction beyond its terms.—*Falconer vs. Campbell*, 2 McL., p. 195.

CONSTRUCTION.—The Supreme Court, in construing the Constitution as to the grants of powers to the United States, and the restrictions upon the States, has ever held that an exception of any particular case presupposes that those which are not excepted are embraced within the grant of prohibition, and where no exception is made in terms, none will be made by mere implication or construction.—*The State of Rhode Island vs. The Commonwealth of Massachusetts*, 12 Peters, p. 657. The Constitution of the United States was ordained and established, not by the United States in their sovereign capacities, but, as the preamble declares, by the people of the United States.—*Martin vs. Hunter*, 1 Wheat., p. 324. The Government of the United States can claim no powers which are not granted to it by the Constitution, either expressly or by necessary implication.—*Id.* The Constitution, like every other grant, is to have a reasonable construction according to the import of its terms; the words are to be taken in their natural and obvious sense, and not in a sense either unreasonably restricted or enlarged.—*Id.* It is a rule of construction that exceptions from a power mark its extent.—*Gibbons vs. Ogden*, 9 Wheat., p. 191. Perhaps the safest rule of interpretation will be found to be, to look to the nature and objects of the particular powers, duties, and rights, with all the light and aid of cotemporaneous history, and to give to the words of each just such operation and force, consistent with their legitimate meaning, as to fairly secure and attain the ends proposed.—*Prigg vs. The Commonwealth of Penn-*

sylvania, 16 Peters, p. 610. The Judiciary Act of 1789, Sec. 34, declaring that the laws of the several States shall be regarded as rules of decision in trials at common law in the Courts of the United States, meant only to include civil cases at common law, and not criminal offenses against the United States.—United States vs. Reid et al., 12 Howard, p. 361. The law by which the admissibility of testimony in criminal cases must be determined, is the law of the State as it was when the Courts of the United States were established by the Judiciary Act of 1789.—Id. The language of the Federal Constitution, together with the object for which it was made, must be the rule for its construction, per Marshall, C. J., in the case of Gibbons vs. Ogden, 9 Wh., p. 189. A construction of the Constitution acted under for years, will not be disturbed by the Courts.—Stuart vs. Laird, 1 Cr., p. 299.

OF THE POWERS OF THE GOVERNMENT.—The powers of the Federal Government are limited; it possesses none but such as are delegated.—U. S. vs. Bailey, 1 McL., p. 234. The powers of the legislative, executive, and judicial departments are independent of each other; they are coördinate, and that which one does by the exercise of its rightful authority is binding upon the others.—Dodge vs. Woolsey, 18 H., p. 347, Wayne, J. Courts cannot pronounce void Acts passed by the Federal or State Legislatures acting manifestly within the powers conferred upon them by the respective Constitutions.—Beach vs. Woodhull, Pet. C. C., p. 2; Albee vs. May, 2 Pa., p. 74. Legislative is to be enforced by the judicial power, and must be, therefore, coequal and coextensive.—Kendall vs. U. S., 12 Pet., p. 526. The Legislature, with the Executive, act conjointly concerning the national boundary and settlement of questions concerning the same, and the judicial department cannot but recognize the act.—Foster vs. Neilson, 2 Pet., p. 253. If the language of a State Constitution requires legislation to give it effect it is not, and will not be held to be, self acting.—Graves vs. Slaughter, 15 Pet., p. 449. Congress has power to provide for the punishment of offenses committed on board a ship of war of the United States wherever that ship may be.—United States vs. Bevans, 3 Wheat., p. 336. The power of Congress to levy and collect "taxes, duties, imposts, and excises" is coextensive with the territory of the United States.—Loughborough vs. Blake, 5 Wheat., p. 317. The powers bestowed by the Constitution upon the Government of the United States were limited in their extent, and were not intended nor

can they be construed to override powers vested in State Governments, which were reserved to those Governments, impliedly, as well as by express provision of the Constitution.—*Golden vs. Prince*, 3 Wash. C. C. R., p. 313.

**GOVERNMENTAL CONTRACT.**—An Act of the Legislature declaring that certain lands to be purchased for the Indians should not thereafter be subject to any tax, constitutes a contract which cannot be rescinded by any other legislative Act.—*New Jersey vs. Wilson*, 7 Cranch, p. 164. Corporations chartered in one State are permitted to make contracts in another by the law of comity.—*The Bank of Augusta vs. Earle*, 13 Peters, p. 519. The result of the decisions in the cases of *Sturges vs. Crowningshield*, 4 Wheat., p. 198; *McMillan vs. McNeil*, id., p. 209; *Golden vs. Prince*, 3 Wash. C. C. R., p. 313; and particularly *Ogden vs. Sanders*, 12 Wheat., p. 213, may be said to be, that a State bankrupt or insolvent law which discharges the person and the future acquisitions of property of a debtor from all liability for his debts, is neither repugnant to the Federal Constitution, nor is it "a law impairing the obligation of a contract," respecting debts contracted subsequent to the passage of such Act. The Constitution of the United States did not commence its operation until the first Wednesday of March, 1789, and the provision relative to laws impairing the obligation of contracts does not extend to a law enacted before that day.—*Owing vs. Speed et al.*, 5 Wheat., p. 420. Any change which a law makes in the terms of a contract impairs its obligation.—*Green et al. vs. Biddle*, 8 Wheat., p. 1. A compact between two States is a contract within that clause of the Constitution which prohibits States from passing laws impairing the obligation of contracts.—*Id.* The Act of New Hampshire which allows to tenants the value of improvements, etc., on recoveries against them is in conflict with the Constitution of the United States.—*Society for the Propagation, etc., vs. Wheeler et al.*, 2 Gallis, p. 105. A law of a State which declares that a debtor, by delivering up his property for the benefit of his creditors shall be forever discharged from the payment of his debts due or contracted before the passage of the law, whether the creditor do any act or not in aid of the law, impairs the obligation of the contract.—*Golden vs. Prince*, 3 Wash. C. C. R., p. 313. A law which authorizes the discharge of a contract by a smaller sum, or at a different time, or in a different manner than the parties have stipulated impairs its obligations.—*Id.* There is nothing in the Con-

stitution of the United States which forbids Congress to pass laws violating the obligation of contracts, though such power is denied to the States individually. *Evans vs. Eaton*, 1 Peters C. C. R., p. 322. There is no part of the Constitution which applies to a State law which divests rights vested by law in an individual, *provided*, its effect be not to impair the obligation of the contract.—*Satterlee vs. Mathewson*, 2 Peters, p. 413. A State law, passed after the execution of a mortgage, which declares that the equitable estate of the mortgagor shall not be extinguished for twelve months after a sale under a decree in chancery, and which prevents any sale unless two thirds of the amount at which the property has been valued by appraisers shall be bid therefor, is within the clause of the Constitution which prohibits States from impairing the obligation of contracts.—*Bronson vs. Kinzie et al.*, 1 Howard, p. 311. A law which, in its operation, amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution.—*McCraken vs. Hayward*, 2 Howard, p. 612. A law providing that a sale shall not be made of property under execution unless it will bring two thirds of its valuation, according to the opinion of three householders, is unconstitutional.—*Id.* A contract made in New York is not affected by a discharge of the debtor under the insolvent laws of Maryland, where the debtor resided.—*Cook vs. Moffat*, 5 Howard, p. 295. On the same subject, see *Planters' Bank vs. Sharp*, 6 Howard, p. 301; also, *West River Bridge Co. vs. Dix et al.*, 6 Howard, p. 507. An Act lessening the salary of an officer after he has entered upon his term of office does not impair a contract between the State and officer, within the meaning of the Constitution of the United States.—*Butler et al. vs. Pennsylvania*, 10 Howard, p. 402. On this subject, see *Richmond Railroad Co. vs. The Louisa Railroad Co.*, 13 Howard, p. 71. Congress has sanctioned the compact between Virginia and Kentucky, viz: that the use and navigation of the River Ohio shall be free and common to the citizens of the United States. This compact can be enforced by the United States Courts.—*Pennsylvania vs. Wheeling*, 13 Howard, p. 519.

- ARTICLE I. LEGISLATIVE DEPARTMENT.  
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 III. JUDICIAL DEPARTMENT.  
 IV. STATE ACTS.  
 V. AMENDMENTS.  
 VI. PROMISCUOUS PROVISIONS.  
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ARTICLE I.

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## SECTION 1.

Legislative  
power.  
Congress.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

NOTE.—LEGISLATIVE POWER.—No one coördinate department can exercise the powers of the others.—*Cherokee Nation vs. Georgia*, 5 Pet., p. 1. The Federal constitutional limitations have no application to the State Constitutions.—*Livingston vs. Moore*, 7 Pet., p. 551. Legislative power of a State is only restrained by its constitutional limitation.—*McDonough vs. Danery*, 3 D., p. 223; *Calder vs. Bull*, id., p. 388, Chase, J.; *Barron vs. Baltimore*, 7 Pet., p. 243; *Menge vs. Gilmore*, 1 Car. L. Rep., p. 34; *Fletcher vs. Peck*, 6 Cr., p. 87. The Federal Government is one of limited powers, but sovereign within the powers delegated.—*Spooner vs. McConnell*, 1 M. L., p. 337. One Legislature, so far as respects general legislation, is competent to repeal any Act which a former Legislature was competent to pass; and one Legislature cannot abridge the powers of a succeeding Legislature. But if an act be done under a law, a succeeding Legislature cannot undo it.—*Fletcher vs. Peck*, 6 Cranch, p. 135. When a law is in its nature a contract, and absolute rights have vested under that contract, a repeal of the law cannot divest those rights.—*Id.* A legislative grant and confirmation vests an indefeasible, irrevocable title. It is neither revocable in its nature, nor held only *durante bene placito*.—*Terret et al. vs. Taylor et al.*, 9 Cranch, p. 50. The Legislature cannot repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal vest the property exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporation.—*Id.*

CONSTITUTIONALITY OF LAWS.—If a legislative Act oppugns a constitutional principle the former must give way, and be rejected on the score of repugnancy, and it is the duty of the Court to declare the Act null and void.—*Vanhorne vs. Dorrance*, 2 Dall., p. 309. It is contrary to the letter and spirit of the Constitution to divest one citizen of his right and vest it in another without full compensation, and if the Legislature may



do so upon full indemnification, it cannot of itself constitutionally determine the amount of the compensation.—*Id.* If the Legislature pass a law within the scope of their constitutional power, the Court cannot pronounce it void merely because it is, in their judgment, contrary to the principles of natural justice.—*Calder et ux. vs. Bull et ux.*, 3 Dall., p. 386. A Court cannot sustain a suit founded on the allegation that an Act is a nullity in consequence of the impure motives which influenced certain members of the Legislature which passed the Act.—*Fletcher vs. Peck*, 6 Cranch, p. 131. The question whether a law is void for its repugnancy to the Constitution, ought seldom, if ever, to be decided in the affirmative in a doubtful case.—*Id.*, p. 128. The Acts of Kentucky of February 27, 1797, and January 31, 1812, concerning occupying claimants of land, are in conflict with the Constitution of the United States, being in violation of the compact between Virginia and Kentucky.—*Green vs. Biddle*, 8 Wheat., p. 1. A law may be unconstitutional and void in relation to particular cases, and yet valid in its application to other cases within the scope of its provisions.—*Golden vs. Prince*, 3 Wash. C. C. R., p. 313. Congress cannot by law assign to the judicial department any duties but such as are of a judicial character.—2 Dall., p. 409. An Act of Congress giving to the United States a preference over all other creditors, in all cases, is constitutional and valid.—*United States vs. Fisher et al.*, 4 Cranch, p. 358.

FEDERAL AND STATE LEGISLATURES.—It is a constitutional power of Government to give the U. S. preference in cases of insolvency.—*U. S. vs. Fisher*, 2 Cr., p. 358; s. c., 1 W. C. C., p. 4. Every Government has power to take care of its own revenues, to protect it by extraordinary securities, and collect it by extraordinary remedies.—*Livingston vs. Moore*, 7 Pet., p. 655; s. c., Bald., p. 424. The prerogative powers which belonged to the King of England, as "*parens patriæ*," remain with the States, and cannot be exercised by the Federal Courts.—*Fontain vs. Ravend*, 17 H., p. 393, Taney, C. J. A State Legislature, prior to adoption of the Federal Constitution, had power to pass bills of attainder and confiscation, unless prohibited by the State Constitution.—*Cooper vs. Telfair*, 4 D., p. 14. If public bodies, not organized or admitted to the Union, undertake to act as States, they must be put down by Federal or State power.—*Scott vs. Jones*, 5 H., p. 343. In case of a grant of power to Congress, without prohibiting the State to act, the State may

continue to act in the premises till Congress shall fully legislate concerning it.—*U. S. vs. New Bed. Bridge*, 1 *W. & M.*, p. 401. A grant of power to Congress, by the Constitution, or when the nature of a power requires it to be exercised by Congress exclusively, all power over the subject is as completely taken away from the State Legislature as if it was expressly forbidden to act on it.—*Sturges vs. Crowningshield*, 4 *Wh.*, p. 193; *U. S. vs. New Bed. Bridge*, 1. *W. & M.*, p. 401. The right of States to pass bankrupt laws is not extinguished by the passage of a general bankrupt law by Congress; it is only suspended so far as the two laws conflict.—*Id.* Where Congress has exclusive power over a subject it is incompetent for a State Legislature to add to its provisions.—*Prigg vs. Penn.*, 16 *Pet.*, p. 539. States may not impede or in anywise control the operation of constitutional laws of Congress to give effect to constitutional powers of the Federal Government.—*McCullough vs. Maryland*, 4 *Wh.*, p. 316. Certain laws of Massachusetts, Rhode Island, and New Hampshire, declared constitutional in the famous "License Cases."—5 *Howard*, p. 504. One part of a statute may be constitutional and valid and another not.—*Duer vs. Small*, 4 *Bl. C. C.*; *s. c.*, *Am. L. R.*, p. 500. In what cases the grant of jurisdiction to punish misdemeanors on tide waters is exclusively in the Federal Government.—See *Corfeld vs. Coryell*, 4 *W. C. C.*, p. 371. A State Legislature may validate an act accomplished which it had the power to authorize to be done.—*Campbell vs. City of Kenosha*, 5 *Wall.*, p. 194. Act to authorize a municipal corporation to subscribe to the stock of a railroad corporation is valid unless restrained by the State Constitution.—*McCoy vs. Co. of Washington*, 7 *Am. L. R.*, p. 193. Acts repugnant to Constitution absolutely void. Legislature is subordinate to Constitution.—*Vanhorne's Lessee vs. Dorrance*, 2 *D.*, p. 308; *Marburry vs. Madison*, 1 *C. R.*, p. 137. A right, however ancient, not founded in contract or secured by the Constitution, may be divested by the law of a State.—*Bennett vs. Boggs, Bald.*, p. 60.

**THE JUDICIAL NOT TO BE IMPEDED BY THE LEGISLATIVE DEPARTMENT.**—Congress cannot assign other than judicial duties to the Judiciary.—*Hayburn's Case*, 2 *D.*, p. 410, note; *U. S. vs. Todd*, 13 *H.*, p. 52. Congressional Act cannot annul judgment of Supreme Court or impair private rights thereby determined.—*Penn. vs. Wheeling and Bel. Bridge Co.*, 18 *H.*, p. 421.

State Legislature is not by the Federal Constitution prohibited from exercising judicial functions.—*Satterlee vs. Matthewson*, 2 Pet., p\* 380; *Livingston vs. Moore*, 7 Pet., pp. 469, 668. A State Legislature cannot determine whether a Federal Court has jurisdiction.—*U. S. vs. Peters*, 5 Cr., p. 115. A special legislative Act authorizing Administrator to sell lands to pay debts is not the exercise of judicial power.—*Watkins vs. Holmes*, 16 Pet., p. 26; same principle, *Florentine vs. Burton*, 2 Wall., p. 210. Right of Congress to confer quasi legislative powers on the Executive—*U. S. vs. The Francis Hatch*, 13 Am. L. R., p. 289. Political department of Government alone may recognize or refuse to recognize a new Government in a foreign country.—*Kennett vs. Chambers*, 14 H., p. 38. Government may acquire territory by conquest or by treaty (*Am. Ins. Co. vs. Canter*, 1 Pet., p. 511) and may legislate for such territory.—*Id.*

## SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

House of  
Representatives.

2. No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumera-

tion shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

NOTE.—See Secs. 1343-1347, and notes, p. 285, ante, Vol. 1, Art., "Elections for Representatives;" State. 1871-2, p. 910. [See, also, Congressional Districts.—Id., Sec. 117.

CONTESTING ELECTION.—The matters necessary to be set out in a petition for contesting an election specified in *Varnum's Case*.—1 Cong. Elec. Cases, p. 112; *Leib's Case*, id., p. 165; *Knox vs. Blair*, 2 Cong. Elec. Cases, p. 521. State law is the rule of decision in a question of the legality of an election.—*Wright vs. Fuller*, 2 Cong. Elec. Cases, p. 152; *Daily vs. Eastbrook*, id., p. 290; *Upton's Case*, id., p. 308; *Sleeper vs. Rice*, id., p. 223. Statute must be complied with in serving notice, reducing deposition to writing, and signing the same by witnesses.—*Spaulding vs. Mead*, 1 Cong. Elec. Cases, p. 157; *McFarland vs. Purviance*, id., p. 131. Sitting member need not have list of illegal votes served on him.—*Vallandigham vs. Campbell*, 2 Cong. Elec. Cases, p. 223. Contestant may present evidence, when taken, on the qualifications, duties, and conduct of the officers of election (id.), and must, within a reasonable time, offer his proofs in support of his petition for the seat of the sitting member.—*Cabell vs. Randolph*, 1 Cong. Elec. Cases, p. 134. Admissibility of evidence in contested cases.—See *Vallandigham vs. Campbell*, 2 Cong. Elec. Cases, p. 223; *Daily vs. Eastbrook*, id., p. 299; *Blair vs. Barrett*, id., p. 308. State law regarding the taking of depositions—as to person who may administer oaths, and how notice is given to take testimony—governs. The voter himself may testify.—*Loyall vs. Newton*, 1 Cong. Elec. Cases, p. 520. Fact not stated in petition cannot be testified to or of.—*Lieb's Case*, 1 Cong. Elec. Cases, p. 165. It was held in *Brooks vs. Davis* that testimony must be taken un-

der the Act of 1851 —2 Cong. Elec. Cases, p. 244. The legal steps prescribed by law must be exhausted before the process of the House is resorted to by contestant.—Carrigan vs. Thayer, 2 Cong. Elec. Cases, p. 576. Political census is too vague and uncertain for use as evidence, and the general rule applies to hearsay testimony.—Ingersoll vs. Naylor, 2 Cong. Elec. Cases, p. 33. A deposition taken after closing of the time for taking it rejected.—Todd vs. Jayne, 2 Cong. Elec. Cases, p. 555. So testimony not under oath.—See Newland vs. Graham, 2 Cong. Elec. Cases, p. 5; New Jersey Case, *id.*, p. 19; Vallandigham vs. Campbell, *id.*, p. 223; Blair vs. Barrett, *id.*, p. 308. Act of 1851 not absolutely binding on the House, but must not, without cause, be disregarded.—Williamson vs. Sickles, 2 Cong. Elec. Cases, p. 288; Harrison vs. Davis, *id.*, p. 341. Congressional committee ought not to inquire into discretionary powers of Election Judges unless sufficient proof of corrupt practices appear as to destroy all confidence in the fairness of such officers.—Biddle vs. Wing, 1 Cong. Elec. Cases, p. 504. If *ex parte* testimony is admitted in favor of one party he cannot object to it by the other.—*Id.*

## SECTION 3.

1. The Senate of the United States shall be composed Senate. of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when

elected, be an inhabitant of the State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote unless they shall be equally divided.

5. The Senate shall choose their other officers and have a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments; when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

NOTE.—METHOD OF ELECTION.—The method of electing U. S. Senators is left to the choice of the State Legislatures.—*Yulee vs. Mallory*, 2 Cong. Elec. Cases, p. 606. Concurrent majority of each House not necessary to elect.—*Cameron's Case*, 2 Cong. Elec. Cases, p. 627. Each House must, by a majority vote, agree to meet, and meet in accordance therewith. The election must be by the two Houses as distinct bodies, though acting together. An election at a meeting of the two Houses, or a majority of each, unless by appointment for the purpose, is not valid.—*Bright and Fitch's Case*, 2 Cong. Elec. Cases, p. 629; *Harlan's Case*, id., p. 621; see Vol. 1, p. 284, ante, Secs. 1332, 1333, and notes, "Election for Senators." In contests before the Senate, the holder of the certificate is entitled to his seat, leaving the committee to determine the validity of his election.—*Potter vs. Robbins*, 1 Cong. Elec. Cases, p. 877. A Governor cannot make a valid appointment to the U. S. Senate, when no vacancy exists, during the recess of the Legislature. It is not sufficient that a vacancy is about to happen.—*Lamman's Case*, 1 Cong. Elec. Cases, p. 871; also, *Sevin's Case*, 2 Cong. Elec. Cases, p. 605.

*An Act to regulate the time and manner of holding elections for Senators in Congress.*

[Approved July 25, 1866.]

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress, in the place of such Senator so going out of office, in the following manner: each House shall openly, by a viva voce vote of each member present, name one person for Senator in Congress from said State, and the name of the person so voted for who shall have a majority of the whole number of votes cast in each House shall be entered on the Journal of each House by the Clerk or Secretary thereof; but if either House shall fail to give such majority to any person on said day that fact shall be entered on the Journal. At twelve o'clock, meridian, of the day following that on which proceedings are required to take place as aforesaid, the members of the two Houses shall convene in joint assembly, and the Journal of each House shall then be read, and if the same person shall have received a majority of all the votes in each House, such person shall be declared duly elected Senator to represent said State in the Congress of the United States; but if the same person shall not have received a majority of the votes in each House, or if either House shall have failed to take proceedings as required by this Act, the joint assembly shall then proceed to choose by a viva voce vote of each member present a person for the purpose aforesaid. And the person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both Houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock, meridian, of each succeeding day during the session of the Legislature, and take at least one vote, until a Senator shall be elected.

SEC. 2. *And be it further enacted,* That whenever at the meeting of the Legislature of any State a vacancy shall exist in the representation of such State in the Senate of the United States, said Legislature shall

proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a Senator for a full term; and if a vacancy shall happen during the session of the Legislature, then on the second Tuesday after the Legislature shall have been organized and shall have notice of such vacancy.

SEC. 3. *And be it further enacted*, That it shall be the duty of the Governor of the State from which any Senator shall have been chosen, as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States, which certificate shall be countersigned by the Secretary of State of the State.

#### SECTION 4.

Congress. 1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

NOTE.—The election of members of Congress from this State, and the formation of Congressional districts, are provided for in Part II, Title I, Chap. III of the Political Code.

ELECTION ON GENERAL TICKET SUSTAINED.—New Hampshire, 2 Cong. Elec. Cases, p. 47; Phelps and Cavanaugh's Case, *id.*, p. 248. *The vote* to be determined by Congress, and not by State authorities.—Reed vs. Cosden's Case, 1 Cong. Elec. Cases, p. 353. If the House is unable to decide which of two are entitled to the seat it must be declared vacant.—Letcher vs. Moore, 1 Cong. Elec. Cases, p. 715. The Act of the Delaware Legislature requiring a ballot to contain two names, one not a resident of the same county with the voter, is constitutional.—Latimer vs. Patton, 1 Cong. Elec. Cases, p. 69. Failure of Legislature to provide for vacancy, or election to fill it, is cured by Governor's proclamation for.—Hoge's Case, 1 Cong. Elec. Cases, p. 349. The Oregon Constitution fixes the time of election of Representative to Congress beyond the control of the Legislature.—Shiel vs. Thayer, 2 Cong. Elec. Cases, p. 349.

TERRITORY not entitled to Representative as a State till admitted into the Union, although a Constitution has been adopted.—Conway vs. U. S., 1 N. and H., p.



68. A *Delegate from Territory's* term expires with the Congress in which he took his seat.—*Doty vs. Jones*, 2 Cong. Elec. Cases, p. 16.

EXTRA OR SPECIAL SESSION.—Members elected for must give way to regularly elected members for that Congress.—*Gohlson and Claiborne's Case*, 2 Cong. Elec. Cases, p. 9. A State law requiring votes to be returned within a certain time directory only.—*Brockenborough vs. Cabell*, 2 Cong. Elec. Cases, p. 79. And if not so returned, are to be counted, if opportunity is had to count them.—*Richards' Case*, 1 Cong. Elec. Cases, p. 95. House is judge of the election of its members, and returns are only primary evidence of election.—*Chrisman vs. Anderson*, 2 Cong. Elec. Cases, p. 328; *Spaulding vs. Mead*, 1 Cong. Elec. Cases, p. 157. One holding a certificate from Governor of Territory, given in lieu of a former certificate superseded for fraud, is entitled to his seat.—*Morton vs. Daily*, 2 Cong. Elec. Cases, p. 402. As to contests of election see note to Sec. 2, ante. The Act of February 28, 1871, requires all votes for members of Congress to be by ballot.—See note to Sec. 1343, ante, Vol. 1, p. 286.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

#### SECTION 5.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Powers of  
Houses of  
Congress.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

NOTE.—See note to Sec. 2, ante, as to contested elections. *The qualifications of members* being fixed by the Constitution, additions cannot be required by State legislation or other acts.—*Barney vs. McCreery*, 1 Cong. Elec. Cases, p. 167; *Turney vs. Marshall*, 2 Cong. Elec. Cases, p. 167; *Trumbull's Case*, id., p. 618. One who was a resident of the United States at the close of the Revolutionary War and an alien was not qualified to sit in the U. S. Senate.—*Gallatin's Case*, 1 Cong. Elec. Cases, p. 85. One being foreign Minister does not thereby lose his residence of his State, so as to disqualify him for a seat in Congress.—*Forsyth's Case*, 1 Cong. Elec. Cases, p. 497. Erecting a Territory into a State does not necessarily vacate the seat of the Delegate.—*Fearing's Case*, 1 Cong. Elec. Cases, p. 127. The House of Representatives has jurisdiction to punish for contempt.—*Anderson vs. Dunn*, 6 Wh., p. 204. Powers of Continental Congress were revolutionary and coextensive with the object to be obtained. *Peterson & Pennballow vs. Doane's Administrators*, 3 D., p. 80.

#### SECTION 6.

Compensation and duties of members.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate, in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

NOTE.—One elected to Congress may resign a disqualifying office before taking his seat.—Hammond vs. Herrick, 1 Cong. Elec. Cases, p. 287; Earle's Case, id., p. 314. If the duties of such office have so far ceased as to virtually abolish the office, a formal resignation is unnecessary.—Mumford's Case, 1 Cong. Elec. Cases, p. 316. Accepting such office after taking his seat works a forfeiture of his office of member of Congress. Van Ness' Case, 1 Cong. Elec. Cases, p. 122. So the acceptance of a military commission operates as a forfeiture.—Id., last supra; Yell's Case, 2 Cong. Elec. Cases, p. 98; Byington vs. Vandever, id., p. 395; see, also, Stanton vs. Lane, 2 id., p. 637. A vacancy filled by an executive appointment to the U. S. Senate again becomes vacant when the State Legislature subsequent to such appointment meets and adjourns without electing.—Williams' Case, 2 Cong. Elec. Cases, p. 612; Phelps' Case, id., p. 613. Such appointee has a right to sit till his successor is elected or appointed and presents his credentials.—Winthrop's Case, id., p. 607.

## SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

Enactment  
of laws.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a

law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

#### SECTION 8.

Powers of  
Congress.

1. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coins, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish Post Offices and post roads;

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies com-

mitted on the high seas, and offenses against the law of nations; Powers of Congress.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

**NOTE.—TAXATION.**—A tax on carriages is not a direct tax, within the meaning of the Constitution.—*Hylton vs. United States*, 3 Dall., p. 171. Congress has no power to exempt any State from its due share of the burden of taxes, but is not bound to extend a direct tax to the District of Columbia and Territories.—*Loughborough vs. Blake*, 5 Wheat., p. 817. A tax

imposed by a law of any State on stock issued for loans made the United States, is unconstitutional.—*Weston et al. vs. The City Council of Charleston*, 2 Peters, p. 449. There is no reason why the property of a corporation should be exempted from its share of necessary public burdens.—*Philadelphia & Wilmington Railroad Co. vs. Maryland*, 10 Howard, p. 376. The taxing power of a State should never be presumed to be relinquished unless the intention is declared in clear and unambiguous terms.—*Id.* A State has no power to impose a stamp duty on bills of lading.—*Almy vs. California*, 24 Howard, p. 169. The power of taxation is a sovereign political power, and a branch of the power of eminent domain (*Stu. & Ind. R. R. Co. vs. Tuscarawus Co.*, 6 Pitts. L. J., p. 68), and is co-extensive with the territory of the U. S.—*Loughborough vs. Blake*, 5 Wh., p. 317. Internal Rev. Act of 1862 held to be constitutional.—*U. S. vs. Riley*, Circuit Court N. Y., 13th February, 1865, Shipman, J. License tax law of 1864 upheld.—*License Tax Cases*, 5 Wall., p. 462.

**TO REGULATE COMMERCE.**—The power to regulate commerce is exclusively vested in Congress, and no part of it can be exercised by a State.—*Gibbons vs. Ogden*, 9 Wheat., p. 186. The several Acts of the State of New York granting to Livingston and Fulton the exclusive right of navigating the waters within the jurisdiction of that State, are in collision with the law and Constitution of the United States.—*Gibbons vs. Ogden*, 9 Wheat., p. 209. That clause of the Constitution which declares that Congress shall have power to regulate *commerce*, etc., comprehends *navigation* also.—*Id.* p. 189. The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several States.—*Id.*, p. 193. It does not comprehend that commerce which is completely internal in a State, and which does not affect other States.—*Id.*, p. 194. It extends as well to vessels employed in carrying passengers, as to those employed in transporting property.—*Id.*, p. 215. The power of laying duties on imports is considered in the Constitution as a branch of the taxing power, and not of the power to regulate commerce.—*Id.*, p. 201. An Act of a State Legislature, requiring all importers of foreign goods by the bale, etc., and other persons selling the same by wholesale, bale, etc., to take out a license for which they shall pay fifty dollars, and subjecting them to certain penalties, etc., in case of neglect to take out such

license, is repugnant to the Constitution of the United States.—*Brown et al. vs. State of Maryland*, 12 Wheat., p. 419. Under the power to regulate commerce, Congress can exclude, either partially or wholly, any subject falling within the legitimate sphere of commercial regulation.—*United States vs. Marigold*, 9 Howard, p. 560.

NAVIGATION.—The power to regulate commerce includes power to regulate *navigation*. It is exclusive, and may be exercised with or without regulations.—*The Chusan*, 2 St., p. 456. Also to determine what are obstructions.—*Penn. vs. Wheeling and Bal. Bridge Co.*, 18 H., p. 421; *Silliman vs. Hud. Riv. Bri. Co.*, 4 Bl. C. C.; s. c., Wall, p. 403; *Gilman vs. Philadelphia*, 3 Wall, p. 713; *The Passaic Bridges*, id., p. 782; *U. S. vs. R. R. Bridge Co.*, 6 McL., p. 517. Also gives jurisdiction over navigable streams to General Government for commercial purposes.—*Jolly vs. Terre Haute Drawbridge Co.*, 6 McL., p. 237. It does not include the means by which it is carried on within a State.—*U. S. vs. The Seneca*, 10 Am. L. R., p. 281; *Brooks vs. The Peytona*, 2 West L. Mo., p. 518; *Whitaker vs. Lorents*, id., p. 520; *U. S. vs. The James Morrison*, Newb., p. 241. These cases and the cases of *Silliman vs. Hud. Riv. Br. Co.*, 4 Bl. C. C.; s. c., 1 Bl., p. 582; 2 Wall, p. 403; *Palmer vs. Cuyahoga Co.*, 3 McL., p. 226; *Works vs. Junction R. R.*, 5 McL., p. 425 (examine opinion of Hall, J., in *Silliman vs. H. R. Br. Co.*, 4 Bl. C. C., contra), hold that the power to regulate commerce in Congress is paramount to that of a State to grant authority to build a bridge over or across a navigable stream. In the absence of any action by Congress exercising such authority, the State may regulate the navigation of streams within it.—See notes to Secs. 2348, 2349, and Secs. 2360-2379, ante, "Navigation;" see, also, *U. S. vs. R. R. Br. Co.*, 6 McL., p. 517; *Woodman vs. Kilboun Manufacturing Co.*, 15 Am. L. R., p. 238; *Cooley vs. Bd. Wardens*, 12 H., p. 299; *Gilman vs. Phil.*, 3 Wall, p. 713. So, also, to improve its lands and promote public health it may authorize the erection of a dam across a small stream, though it was previously navigable.—*Wilson vs. Blackbird Creek Marsh Co.*, 2 Pet., p. 245; s. p., *Atkinson vs. Phil. and Trenton R. R. Co.*, 14 Haz. Pa. Reg., p. 10. State cannot obstruct a navigable stream which extends to other States, or connected with a lake or river that falls into the sea.—*Palmer vs. Cuyahoga Co.*, 3 McL.,

p. 226; *Columbus Ins. Co. vs. Peoria Br. Ass.*, 6 McL., p. 70. Restrictions on commerce between the States may not be imposed by a State.—*Balt. vs. Connellsville and South. Penn. R. W. Co.*, 13 Pitts L. J., p. 576; s. c., 13 Am. L. R., p. 750; *Halderman vs. Beckwith*, 4 McL., p. 286. *Aliter*, where it is exclusively within the State. States may regulate pilotage.—*Pac. M. St. S. Co. vs. Joliffe*, 2 Wall, p. 450. States right to regulate and establish ferries reserved and not granted to Congress.—*Conway vs. Taylor's Express*, 1 Bl., p. 604; *U. S. vs. The Wm. Pope*, id., p. 256. Laws of Pennsylvania and other States concerning pilotage construed.—*Cooley vs. Board of Wardens*, 12 Howard, p. 299.

**PASSENGERS.**—Acts of 1838 and 1843, for better security of lives of, construed.—*Warring vs. Clark*, 5 Howard, p. 441. The Acts of New York, passed February, 1824, concerning passengers, constitutional.—*City of New York vs. Miln*, 11 Peters, p. 103. The statutes of New York and Massachusetts, imposing taxes upon alien passengers arriving in the ports of those States, declared to be contrary to the Constitution.—*Passenger Cases*, 7 Howard, p. 283. State law inflicting penalty on shipmaster for not reporting passengers is not regulating commerce and is valid.—*N. Y. vs. Miln*, 11 Pet., p. 102; s. c., 2 Pa., p. 429; see *Smith vs. Turner*, 7 H., p. 283. It is the duty of every steamboat to keep a trustworthy person employed as a lookout, and if there be none such additional to the helmsman, or if he was not stationed in the proper place, or not vigilantly employed at his duty, it must be regarded as prima facie evidence that the collision was the fault of the steamboat.—*Propeller Genesee Chief vs. Fitzhugh et al.*, 12 Howard, p. 443. A judgment in personam against a steamboat company for the loss of specie carried in their boat by one of the persons called "express carriers," and lost by fire in Long Island Sound, affirmed.—*New Jersey Steam Navigation Company vs. Merchants' Bank*, 6 Howard, p. 344. See the following cases, recognizing powers of Congress, as follows: Power over commerce and navigation embraces government of seamen, whether in a foreign port or at home.—*Roberts vs. Skolfield*, 8 Am. L. R., p. 156. To regulate commerce with Indians, but does not have general jurisdiction over Indian territory within the boundary of a State.—*U. S. vs. Bailey*, 1 McL., p. 234. May prohibit intercourse with Indians except under a license.—*U. S. vs. Cesna*, 1 McL., p. 254. May legalize a railroad bridge over a navigable stream.—*Gray*



vs. Clinton Bridge, 16 Am. L. R., p. 149. The treaty of 1819, between the United States and Spain, construed.—United States vs. Ferreira, 13 Howard, p. 40.

**NATURALIZATION.**—The individual States have a constitutional right to pass naturalization laws; *provided*, they do not contravene the rule established by the authority of the Union.—Collett vs. Collett, 2 Dall., p. 294; see United States vs. Villatto, *id.*, p. 370. The power of naturalization is exclusively in Congress.—Chirac vs. Chirac, 2 Wh., p. 259; Golden vs. Prince, 8 Wash. C. C. R., p. 313. The County Courts of California have jurisdiction to naturalize, by amendment of 1862 to the State Constitution, but this is concurrent jurisdiction with others having original common law jurisdiction. The power to naturalize is a recognized judicial power. Congress cannot confer judicial powers upon a State Court. The Supreme Court of this State has exclusive appellate jurisdiction, but has no power to naturalize. So held in *Ex Parte F. Knowles*, 5 Cal., p. 300.

**BANKRUPTCY.**—A State has authority to pass bankrupt laws which do not conflict with any Act of Congress to establish a uniform system of bankruptcy, nor impair the obligation of contracts.—Sturges vs. Crowningshield, 4 Wheat., p. 122. The power to pass *bankrupt* laws was held to be exclusively in Congress in case of Golden vs. Prince, 8 W. C. C., p. 313. Law of 1841 constitutional.—*Ex Parte Klein*, 1 H., p. 277; reversing *s. c.*, 2 N. Y. Leg. Obs., p. 185. Constitutional authority of Congress complete, and the Federal Courts have full law and equity jurisdiction therein.—Mitchell vs. Great Works M. & M. Co., 2 Story, p. 648. Under the Constitution, Congress had power to bring all parties, estates, and interests connected with bankrupt into District Court for adjudication, but under the Act of 1867 they have not done so.—*Ex Parte Campbell*, 16 Am. L. R., p. 100. See note to Preamble, *ante*.

**TO COIN MONEY.**—Legal Tender Acts all constitutional, and applicable to all payments to be made after passage, etc. So held in the case of Latham vs. U. S., 1 N. & H., p. 149; *s. c.*, 2 N. & H., p. 578. To provide for punishment of *counterfeiting*.—Campbell vs. U. S., 10 Law Rep., p. 400; U. S. vs. ———, 12 Law Rep., p. 90. See Sec. 3272, *ante*, and note.

**PIRACY.**—Definition of piracy by the law of nations. U. S. vs. Baker, 5 Wh., p. 184. Robbery or forcible depredation on the sea, "*animo furandi*," is piracy by the law of nations and the Act of Congress.—*Id.*, and

U. S. vs. Smith, 5 Wh., p. 153. Under the Act of 1790, that which is piracy on the high seas is not punishable with death if committed on land.—U. S. vs. Palmer, 3 Wh., p. 610; U. S. vs. Jones, 3 W. C. C., p. 209; U. S. vs. Perez, 2 Wh. Cr. Cases, p. 96; U. S. vs. Hutchings, id., p. 543. This Act extends to all persons who on board of vessels throw off national character by cruising and committing piracy on other vessels. Eighth section of Act of April 30th, 1790, not repealed by Act of March 3d, 1819.—U. S. vs. Furlong, 5 Wh., p. 184. The Act of Congress referring to the law of nations for a definition of the crime of piracy is a constitutional exercise of the power of Congress to define that crime. U. S. vs. Smith, 5 Wheat., p. 153.

WAR.—The power to make war is vested exclusively in Congress.—United States vs. Smith, Trials of Smith and Ogden, p. 84. Every contention by force between two nations, in external matters, under authority of their respective Governments, is a *public* war.—Bas vs. Tingy, 4 D., p. 37. A state of war may exist without any formal declaration of it by either party; and this is true both of civil and foreign war.—The Army Warwick, 2 Bl., p. 635; s. c., 2 Spr., p. 123. On a declaration of war a citizen, unless ordered by his Government, is not bound to return home from a foreign country.—The Joseph, 1 Gall., p. 545.

CAPTURES ON LAND AND WATER.—The power of making rules concerning captures on land and water is not confined to captures which are extra-territorial, and is an express grant to Congress of the power of confiscating an enemy's property found within the territory at the declaration of war, as an independent substantive power.—Brown vs. The United States, 8 Cranch, p. 110. A capture is rightful within neutral territory.—The Anne, 3 Wh., p. 435; The Sir Wm. Peel, 5 Wall., p. 517. All captures *jure belli* are for the Government.—The Dos Hermanos, 10 Wh., p. 306; The Joseph, 1 Gall., p. 545; s. c., 8 Cr., p. 451; The Emulous, 1 Gall., p. 563.

## SECTION 9.

Limitation  
of the  
powers of  
Congress.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight,

but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Limitation  
of the  
powers of  
Congress.

NOTE.—See Secs. 2949-2968, and notes, ante, "Immigration."

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein-before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

NOTE.—SLAVES.—The ninth section, first Article, of the Constitution, which restrained Congress from forbidding the migration or importation of slaves prior to the year 1808, did not apply to the State Legislatures. *Butler vs. Hoppen*, 1 Wash. C. C. R., p. 499. As a result of the civil war and the thirteenth amendment of the Constitution, slavery no longer exists in the United States.

HABEAS CORPUS.—All the Courts of the United States have power to issue this writ.—*Ex Parte Bollman*, 4 Cranch, p. 75; *Ex Parte Watkins*, 7 Peters, p. 568; *Ex Parte Burford*, 8 Cranch, p. 448; *Ex Parte Kearney*, 7 Wheat., p. 38; *United States vs. Hamilton*,

3 Dall., p. 17; *Ex Parte Milburn*, 9 Peters, p. 704; *Ex Parte Dorr*, 3 Howard, p. 103. President cannot suspend unless Act of Congress authorizes it.—*Ex Parte Merryman*, 9 Am. L. R., p. 524; s. c., 24 L. R., p. 78; *Ex Parte Benedict*, 4 West L. Mo., p. 449; *McCall vs. McDowell*, 1 Pacific Law Mag., p. 360; see *Ex Parte McQuillon*, 3 West L. Mo., p. 440; s. c., 9 Pitt's L. J., p. 27. Only when public safety requires it.—*Ex Parte Keeler*, Hamp., p. 306. The right is above the sphere of ordinary legislation.—U. S. *vs. Williamson*, 4 Am. L. R., p. 5. Under Act of 1863, one arrested, if not indicted at next term of Circuit or District Court, entitled to discharge.—*Ex Parte Mulligan*, 4 Wall., p. 3. Congress may indemnify officers disregarding writ under suspension of.—*McCall vs. McDowell*, supra; see *Ex Parte Blum*, 2 Spr., p. 73; *Fagan*, id., p. 93; see Act March 3, 1863.

**EXPORT DUTY.**—Tonnage duty is not prohibited from being imposed on foreign vessels.—*Aguire vs. Maxwell*, 3 Bl. C. C., p. 140.

**EX POST FACTO LAWS.**—The prohibition in the Federal Constitution of ex post facto laws extends to penal statutes only, and not to cases affecting only the civil rights of individuals.—*Calder et ux. vs. Bull et ux.*, 3 Dall., p. 386. A resolution or law of a State Court setting aside a decree of a Court and granting a new trial to be had before the same Court, is not void under the Constitution as an ex post facto law.—*Id.* The words and intent of the ex post facto prohibition embraces: 1. Every law that makes an action done before the framing of the law, and which was innocent when done, criminal, and punishes such action; 2. Every law that aggravates a crime or makes it greater than when it was committed; 3. Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; 4. Every law that alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender.—*Id.* A law merely divesting antecedent vested rights of property, where there is no contract, is not inconsistent with the Constitution of the United States. A retrospective law is within the constitutional powers of the States. *Baltimore and Susquehanna Railroad vs. Nesbit et al.*, 10 Howard, p. 395.

## SECTION 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Limitation  
of the  
powers of  
States.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

**LAW IMPAIRING THE OBLIGATION OF CONTRACTS.—** See note to Preamble, ante. *Tonnage duty.*—See *Agure vs. Maxwell*, in note to Sec. 9, ante; is not inhibited to the States. The *prohibition of the Constitution* embraces all contracts between a State and individuals, or corporations, or between the States themselves, or between individuals.—*Green vs. Biddle*, 8 Wh., p. 1; *Bridge Proprietors vs. Hoboken Co.*, 1 Wall., p. 117. A compact between two States is such contract, the obligation whereof is protected by the Constitution when the consent of Congress thereto is given.—*Green vs. Biddle*, 8 Wh., p. 1; *Spooner vs. McConnell*, 1 McL., p. 338. A grant of lands by a State is such contract, the obligation of which cannot be impaired by a subsequent law.—*Fletcher vs. Peck*, 6 Cr., p. 87; *Tenett vs. Taylor*, 9 id., p. 43; *Town of Pawlet vs. Clark*, id., p. 292; *McGee vs. Mathis*, 4 Wall., p. 143. The repeal of a law which is a contract cannot take away vested rights.—See last above cases; and *The Binghamton Bridge*, 3 Wall., p. 51; *Thompson vs. Holton*,

6 McL., p. 386. See same cases as to how a State may contract so as to preclude itself from impairing the obligations thereof by subsequent acts; and *Van Hoffman vs. City of Quincy*, 4 Wall., p. 535. A State Legislature may by contract surrender the right of taxation as to the property of a corporation, and may not afterwards impair such contract.—*State Bank of Ohio vs. Knoop*, 16 H., p. 369; *Ohio Life Ins. and Trust Co. vs. Debolt*, id., p. 416; *Dodge vs. Woolsey*, 18 H., p. 331; s. c., McL., p. 142; and several other cases. In the State of California the State Constitution requires that “taxation shall be equal and uniform throughout the State,” and “all property in this State shall be taxed according to its value,” which renders these decisions inapplicable to this State. A State insolvent law discharging both the debtor and his future acquisitions as respects subsequent debts is not unconstitutional so far as contracted with citizens of the same State.—*Ogden vs. Saunders*, 12 Wh., p. 213; *Baldwin vs. Hale*, 1 Wall., p. 223. But a discharge under such a law does not bar the rights of citizens of other States.—*Idem*; *Boyle vs. Zacharis*, 6 Pet., p. 348; s. c., id., p. 635; *Suydam vs. Broadnax*, 14 Pet., p. 67; *Cook vs. Moffatt*, 5 H., p. 295; *Gilman vs. Lockwood*, 4 Wall., p. 409. Unless they make themselves parties and receive a dividend of the estate.—*Idem*; and *Clay vs. Smith*, 3 Pet., p. 411. It does not change the rule if the note was given and payable in the same State, if payer resides in another.—*Idem*. Though retrospective such law does not impair the obligations of contracts.—*Adam vs. Storey*, 1 Pa., p. 79. Taking property of a corporation chartered by the Legislature for public use does not impair the obligation of contract.—*West Riv. Bridge Co. vs. Dix*, 6 H., p. 507; *R. F. and P. R. R. Co. vs. Louisa R. R. Co.*, 13 H., p. 71.

**EX POST FACTO.**—Under pretense of attaching a condition or making a qualification, States cannot in effect inflict a punishment for an act done not punishable at the time it occurred.—*Cummings vs. Missouri*, 4 Wall, p. 277. Deprivation or suspension of rights for past conduct is punishment within the meaning of the Constitution.—*Ex Parte Garland*, id., p. 333. Such Acts of legislation not only *ex post facto* but are in their nature bills of attainder.—*Id.* So are Acts requiring test oaths as to past acts.—*Id.*; *Ex Parte Baxter*, 14 Am. L. Rep., p. 159; *Ex Parte Law*, 15 id., p. 410; *Ex Parte Magruder*, id., p. 292. Retrospective Acts neither impairing contracts nor in their nature *ex post facto* are not within the constitutional prohibi-

tion.—*Satterlee vs. Matthewson*, 2 Pet., p. 280; *Watson vs. Mercer*, 8 Pet., p. 88; *Charles Riv. Bridge vs. Warren Bridge*, 11 Pet., p. 420; *Balt. and Susq. R. R. Co. vs. Nesbit*, 10 H., p. 395; *Carpenter vs. Penn.*, 17 H., p. 456; *Alber vs. May*, 2 Pa., p. 74; *Locke vs. New Orleans*, 4 Wall, p. 172. Statute may validate past transactions not impairing vested rights.—*Leland vs. Wilkinson*, 10 Pet., p. 294; *People vs. Brady*, 40 Cal., p. 196.

**BILLS OF CREDIT.**—The Act of Missouri, passed July 27, 1821, "for the establishment of loan offices," was unconstitutional and void.—*Craig & Moore vs. The State of Missouri*, 4 Peters, p. 410; *Byrne vs. State of Missouri*, 8 Peters, p. 40. To constitute a "bill of credit" within the Constitution, it must be issued by the sovereign power, containing a pledge of its faith, and designed to circulate as money.—*Briscoe vs. The Bank of the Commonwealth of Kentucky*, 11 Peters, p. 313. The Constitution considers the emission of bills of credit and the enactment of tender laws as distinct operations, independent of each other. Both are forbidden. *Craig vs. State of Missouri*, 4 Peters, p. 410. The bills of a banking corporation, which has corporate property, are not bills of credit within the meaning of the Constitution, although the State which created the bank is the only stockholder, and pledges its faith for the ultimate redemption of the bills.—*Darrington vs. The Bank of Alabama*, 13 Howard, p. 12. The "legal tender" Acts held to be constitutional, and their use in payment of all indebtedness subsequent to its passage held valid, in *Latham vs. U. S.*, 1 N. & H., p. 149; s. c., 2 N. & H., p. 573.

**RIGHTS OF THE STATES.**—The power of a Legislature of a State relative to the confirmation of a sale of real estate, is greater than the judicial power. They may sanction past transactions, where vested rights are not disturbed, while the Court can only authorize a title to be made in future.—*Leland et al. vs. Wilkinson*, 10 Peters, p. 294. A State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, when that jurisdiction is not surrendered or restrained by the Constitution of the United States.—*Id.* No sovereign State is liable to be sued without her consent.—*Briscoe et al. vs. The Bank of the Commonwealth of Kentucky*, 11 Peters, p. 257. The Legislature of a State cannot annul the judgment or determine

the jurisdiction of the Courts of the United States.—*United States vs. Peters*, 5 Cranch, p. 115. Wherever a right grows out of, or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the States, and whoever may have this right, it is protected.—*Owing vs. Norwood's Lessee*, 5 Cranch, p. 348. The mere grant of a power to Congress does not imply a prohibition on a State to exercise the same power.—*Sturges vs. Crowningshield*, 4 Wheat., p. 122. The State Governments have no right to tax any of the constitutional means employed by the Government of the Union to exercise its constitutional powers.—*McCulloch vs. Maryland*, 4 Wheat. p. 316. The State Governments retain the right to make such laws as they may think proper within the ordinary functions of legislation, if not inconsistent with the powers vested exclusively in the Government of the United States and forbidden by the Constitution.—*Golden vs. Prince*, 3 Wash. C. C. R., p. 313. The power conferred upon Congress by the fifth and sixth clauses of the eighth section, first Article of the Constitution, "to coin money, regulate the value thereof, and to provide for punishing counterfeiting coin," etc., does not prevent a State from passing a law to punish the circulation of counterfeit coin of the United States.—*Fox vs. The State of Ohio*, 5 Howard, p. 410. The prohibitions contained in the amendments to the Constitution were intended to be restrictions upon the Federal Government and not upon the authority of the States.—*Id.* A bridge held by an incorporated company, under a charter from a State, may be condemned and taken as part of a public road under the laws of that State.—*West River Bridge Co. vs. Dix et al.*, 6 Howard, p. 507. The Constitution of the United States cannot be so construed as to take away from the States the right of eminent domain.—*Id.* A person in custody under a *ca. sa.* issued under the authority of the Circuit Court of the United States, cannot legally be discharged from imprisonment by a State officer acting under a State insolvent law.—*Duncan vs. Darst et al.*, 1 Howard, p. 301. The shores of navigable waters and the soil under them, were not granted by the Constitution to the United States, but were reserved to the States respectively, and the new States have the same rights over this subject as the original States.—*Pollard vs. Hagan*, 3 Howard, p. 212. Although no State could establish a permanent military government, yet it may use its military power to put down an armed insurrec-



tion, too strong to be controlled by the civil authority. The State must determine for itself what degree of force the crisis demands.—*Luther vs. Borden*, 7 Howard, p. 1. A State has power to regulate the remedies by which contracts and judgments are sought to be enforced in Courts of justice, unless its regulations are contrary to the Constitution or laws of the United States.—*Bank of Alabama vs. Dalton*, 9 Howard, p. 522. Congress did not intend to declare by the Act of 1790, that a judgment rendered in one State against the person of a citizen of another, who had not been served with process, or voluntarily made defense, should have such faith and credit in every other State, as it had in the State in which it was rendered.—*D'Arcy vs. Ketchum*, 11 Howard, p. 165. After the admission of a State into the Union, Congress can make no grant of land, situated between high and low water marks.—*Goodtie vs. Kibbe*, 13 Howard, p. 25; 3 Howard, p. 212; 9 Howard, p. 477. Where a power possesses a river and cedes the territory on the other side of it, making the river the boundary, that power retains the river unless there is a stipulation to the contrary.—*Howard et al. vs. Ingersoll*, 13 Howard, p. 381. The rights of the Crown devolved upon the States by the revolution, and confirmed by the treaty of peace (*Bennett vs. Boggs*, Bald., p. 60), are sovereign within their own limits.—*Bank U. S. vs. Daniel*, 12 Pet., p. 33. For some purposes sovereign, for some subordinate.—*Cohens vs. Virginia*, 6 Wh., p. 414, Marshall, C. J. A State has no power over the public lands within its limits.—*Turner vs. Am. Bap. Miss. Union*, 5 McL., p. 344. Respecting internal regulations the several States on the 4th day of July, 1776, became entitled to all the rights and powers of sovereign States.—*McIlvaine vs. Coxe*, 4 Cr., p. 209; s. p., *Bank of U. S. vs. Daniel*, 12 Pet., p. 33; *Bennett vs. Boggs*, Bald., p. 60. The people of the several States are absolutely and unconditionally sovereign within their respective territories, with the exception of those powers expressly surrendered to the Federal Government by the Constitution of the United States.—*Ohio L. Ins. & Trust Co. vs. Debolt*, 16 H., p. 428, Taney, J. A State has the right to expel from it criminals, paupers, or liberated slaves.—So held in *Moore vs. Illinois*, 14 H., p. 13; also *Costin vs. Washington*, 2 Cr. C. C., p. 254. The States of the Union are not independent States, but are dependent and subordinate to the Federal Government for all specific purposes for which it was adopted and ordained.—*The General Parkhill*

Dist. Court, Philadelphia, Cadwalader, J., 23d July, 1861. The allegiance which a citizen owes to his State is subordinate to that which he owes to the Federal Government within its conferred powers and to the extent of its jurisdiction.—U. S. vs. Greiner, 24 Law Rep., p. 92; s. c., 4 Phila., p. 396. Federal Government is one of delegated powers; and all powers not delegated to it, or inhibited to the States, are reserved to the States or to the people thereof.—Briscoe vs. Bank of Ky., 11 Pet., p. 258.

COMMERCE.—The power of Congress over commerce with foreign nations and among the States, is *exclusive when exercised*. The States have concurrent power with Congress to regulate commerce, with the understanding that in case of conflict State regulations must give way. This power extends to every species of commercial intercourse, and operates upon persons as well as property.—People vs. Coleman, 4 Cal., p. 46; People vs. Downer, 7 Cal., p. 169; Mitchell vs. Stedman, 8 Cal., p. 363; Lin Sing vs. Washburn, 20 Cal., p. 534.

BETWEEN THE STATES.—The several States have no power to regulate commerce between themselves, but by the provisions of this Article Congress has that power exclusively. An impost by way of toll, on logs and lumber floated in a stream from one State to another for revenue purposes of the State, by which the toll is imposed, is an unconstitutional attempt to regulate commerce.—C. L. R. Co. vs. Patterson, 33 Cal., p. 334; see "Jurisdiction," Code of Civil Procedure Cal.

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## ARTICLE II.

### EXECUTIVE DEPARTMENT.

#### SECTION 1.

##### *Powers of Executive.*

1. President and Vice President. Terms of.
2. Electors.
3. Manner of choosing President by Electors.
4. Time of choosing Electors.
5. President's qualifications.
6. Vacancy in office of.
7. Salary.
8. Oath.

## SECTION 2.

*Other powers and duties.*

1. Act as Commander in Chief. Reprieves, pardons.
2. To make treaties, how. Appointments.
3. To fill vacancies.

## SECTION 3.

*Messages to, and power of assembling and adjourning Congress.  
Reception of Ambassadors, etc. Commissioning officers.*

## SECTION 4.

*Removal of officers on impeachment.*

## SECTION 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Powers of  
Executive.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an Elector.

3. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Repre-

Powers of  
Executive.

representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall, in like manner, choose the President. But, in choosing the President, the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

NOTE.—This clause has been superseded by the twelfth amendment to the Constitution.

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within

that period any other emolument from the United States or any of them.

'8. Before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

## SECTION 2.

1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Other powers and duties.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of law, or in the heads of Departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

NOTE.—The *President* as the *Commander in Chief*. If a foreign nation should invade the territory of the United States, the President's duty requires him not only to *resist* the *invasion*, but to invade the enemy's country.—Trials of Smith and Ogden, p. 85. The

Amy Warwick, 2 Spr., p. 123; s. c., 2 Bl., p. 635. If war exists, the President, without an Act of Congress, has a belligerent right to declare a blockade.—The Tropic Wind, 24 Law Rep., p. 144; Act of 13th July, 1861; Constitutional; The Ned, Bl. Cr. Cas., p. 119. The President may arrest mischievous persons who impede or endanger military operations in time of civil war.—*Ex Parte Vallandigham*, 5 West., L. Mo., p. 37. Private property may be taken by a military commander to prevent it from falling into the hands of the enemy, or for the purpose of converting it to the use of the public, if the danger is immediate and impending, and the necessity urgent.—*Mitchell vs. Harmony*, 13 Howard, p. 115. But the officer cannot take possession of private property for the purpose of insuring the success of a distant expedition, upon which he is about to march.—*Id.* When martial law has been declared in a State, an officer may lawfully arrest any one who he has reason to believe is engaged in the insurrection, or order a house to be forcibly entered.—*Luther vs. Borden*, 7 Howard, p. 1.

**EXECUTIVE AUTHORITY.**—The President may make and repeal rules and regulations for the compensation of extra services of army officers when Congress has not legislated thereon. The Secretary of War promulgates them.—*U. S. vs. Eliason*, 16 Pet., p. 291; also, *U. S. vs. Webster, Dav.*, p. 38. Executive construction of laws, when carrying them into effect, binding on the judiciary when private rights are not affected.—*U. S. vs. Lytle*, 5 McL., p. 9. The heads of departments are the media through which the Executive does many acts, hence their acts are presumed by the Courts to be done by his direction.—*Wilcox vs. Jackson*, 13 Pet., p. 498; *U. S. vs. Cutter*, 2 Court, p. 617. These departments must necessarily do many things not expressly authorized by law but essential to the proper action of the Government, though they are limited in the exercise of their powers.—*U. S. vs. Macdaniel*, 7 Pet., p. 2. Prohibiting an act, except under the special direction of the President, does not require his personal performance of the act. It must be done through the agency of the proper department.—*Williams vs. U. S.*, 1 H., p. 290; s. c., 5 Cr. C. C., p. 619. Official acts of the President, and the record of the same, are kept in the respective departments.—*Lockington vs. Smith*, Pet. C. C., p. 466. President may remove all officers, at his discretion, civil or military, except those in the judicial department or where Congress has given some other duration.—*Gratiot vs. U. S.*, 1 N. & H., p. 268.

Power to grant pardons unlimited, except in impeachment, and not subject to control of Congress.—*Ex Parte Garland*, 4 Wall., p. 334. May grant conditional pardon.—*Ex Parte Wells*, 18 H., p. 307. President *cannot* dispense with the execution of a statute nor control it, nor authorize that which the law forbids to be done by another (*U. S. vs. Smith*, *Trials of Smith and Ogden*, pp. 84, 237; *Kendall vs. U. S.*, 12 Pet., p. 525; s. c., 5 Cr. C. C., p. 163), nor authorize Secretary of State to omit the performance of an act required by law.—*Marbury vs. Madison*, 1 Cr., p. 137. All his instructions not supported by law are illegal, and not obligatory on inferior officers.—*Gilchrist vs. The Coll. of Charleston*, 1 Hall L. J., p. 429; also, *Otis vs. Bacon*, 7 Cr., p. 589; *Tracy vs. Swartwout*, 10 Pet., p. 80; *Kendall vs. U. S.*, 12 Pet., p. 525; same case, 5 Cr. C. C., p. 163. In obeying President's instructions commander of a public vessel acts at his peril and is responsible in damages to party injured if instructions are not in accordance with the law. *Little vs. Barreme*, 2 Cr., p. 170. Neither will illegal instructions of the Secretary of the Treasury justify illegal acts of a Collector.—*Tracy vs. Swartwout*, 10 Pet., p. 80; *Gray vs. Lawrence*, 3 Bl. C. C., p. 117; *Foster vs. Peaslee*, 21 Law Rep., p. 341; *Magruder vs. U. S.*, Dev. C. C., p. 21. An Act expired is not revived by proclamation of the President.—*The Orono*, 1 Gall., p. 137. When President's order would be a justification in law, the inferior must obey it, and only then.—*U. S. vs. Kendall*, 5 Cr. C. C., p. 163; same case, 12 Pet., p. 524. He cannot further interfere in a public prosecution than to end it and discharge defendant.—*U. S. vs. Corril*, 23 Law Rep., p. 145. Nor can he suspend the writ of habeas corpus, without an Act of Congress authorizing it.—*McCall vs. McDowell*, 1 Pac. Law Mag., p. 360; *Ex Parte Merryman*, 9 Am. L. R., p. 524. The proclamation of September 24th, 1862, held to be without authority and void as a defense of an officer's acts under it.—*Id.* The seizure and condemnation of enemy's property found in our ports not authorized by President's proclamation on breaking out of war.—*Brown vs. U. S.*, 8 Cr., p. 110. The Constitution does not forbid the issuing of a Treasury distress warrant, it being an executive and not a judicial act.—*Murray vs. Hob. Land and Imp. Co.*, 18 H., p. 272. When injustice is wrought thereby, the Courts will review regula-

tions of the executive department in settling accounts. *U. S. vs. Cadwalader, Gilp.*, p. 563.

**APPOINTMENTS.**—The Constitution, with regard to the appointment and commissioning of officers by the President, seems to contemplate three distinct operations: 1. The nomination—this is the sole act of the President, and is completely voluntary; 2. The appointment—this is also the act of the President, though it can only be performed by and with the advice and consent of the Senate; 3. The commission—to grant a commission to a person appointed might perhaps be deemed a duty enjoined by the Constitution.—*Marbury vs. Madison*, 1 Cranch, p. 137. The acts of appointing and commissioning are distinct acts.—*Id.* Complete when officer's commission is signed and sealed.—*U. S. vs. Le Barron*, 19 H., p. 73. Though no bond is given before the decease of President appointing, the appointment is valid.—*Id.* A commission is not necessary to an appointment.—*Marbury vs. Madison*, first supra. Bond not a condition precedent to authority to act when appointment is confirmed by the Senate, of a Paymaster.—*U. S. vs. Bradley*, 10 Pet., p. 344. Mismomer immaterial in commission delivered to officer appointed.—*Ex Parte Seymour*, 2 Liv. L. Mag., p. 77. The law must establish all other than constitutional offices.—*U. S. vs. Maurice*, 2 Brock., p. 96. Only when authorized by law may heads of departments appoint. *Id.*

**TENURE AND REMOVALS.**—An office is held at the pleasure of the appointing power when not otherwise prescribed in the Constitution or laws of the U. S. as to tenure.—*Ex Parte Hennen*, 13 Pet., p. 230; and it is here also held that the power of removal is incident to that of appointment.—*Id.* If an incumbent has notice of his successor being appointed, and the appointing power makes the change and recognizes the appointee as the officer, no other formal act of removal or appointment is requisite.—*Id.*, and *Bowerbank vs. Morris*, Wall. C. C., p. 119. An appointee receiving commission from the President takes the oath and gives the bond required, his predecessor is superseded and removed without further notice.—*U. S. vs. Bank of Arkansas*, Hemp., p. 460. Prior to the passage of the Tenure of Office Act the President had power to remove officers at will.—*U. S. vs. Avery*, 1 Pacific Law Mag., p. 241. All officers, civil or military, except judicial or those to which Congress has given other duration, are thus subject to Presidential removal.—*Gratiot vs. U. S.*, 1 N. & H., p. 258. The



Tenure of Office Act did not apply to the removal of one appointed by his predecessor in office at the time of its passage, and who held over.—Johnson's Trial (Impeachment). President cannot remove Justices of the Peace in the District of Columbia.—Maybury vs. Madison, 1 Cranch, p. 137.

RESIGNATION.—A public officer may resign at any time. On receipt of his resignation at the proper office his sureties are no further liable for acts to be performed.—U. S. vs. Wright, 1 McL., p' 509. President cannot require a continuation in office, but must accept resignation.—Id.

## SECTION 3.

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Messages to, and power of assembling and adjourning Congress; reception of Ambassadors, etc.; commissioning officers.

## SECTION 4.

1. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Removal of officers on impeachment.

NOTE.—A Senator or Representative in Congress is not subject to impeachment. Especially is this the case after he has been expelled.—Blount's Trial, pp. 22, 102; same case, Whart. St. Tr., pp. 260, 316. What is ground for an impeachment.—Chase's Trial; Pickering's Case, Serg. Const. L., p. 376; Peck's Trial; Johnson's (President's) Trial. Rules and regulations for the trial of impeachments.—Peck's Trial, p. 56; 2 Am. L. Rev., p. 557; Journals Cal. Senate, 1856-7.

ARTICLE III.

JUDICIAL DEPARTMENT.

SECTION 1.

*Supreme and inferior Courts. Term of office and compensation of Judges.*

SECTION 2.

*Judicial powers.*

- 1. Jurisdiction of Supreme Court.
- 2. Original and appellate.
- 3. Jury trials, when allowed.

SECTION 3.

*Treason.*

- 1. Definition and evidence of.
- 2. Punishment of.

SECTION 1.

Supreme and inferior Courts; term of office and compensation of Judges.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

Judicial powers.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

NOTE.—After admission into the Union a State cannot control the records of the former Territorial Courts.—*Hunt vs. Palao*, 4 H., p. 589. Territorial Courts held by Judges appointed for four years do not exercise any judicial power conferred by Constitution of the United States on the General Government.—*Am. Ins. Co. vs. Canter*, 1 Pet., p. 511. These Courts were created by Florida Territorial Legislature.—*Id.* No part of the judicial power can be reposed in an executive officer.—*Beatty vs. U. S.*, Dev. C. C., p. 231. In deciding on claims arising under a treaty a District Judge acts not under judicial constitutional authority but as a Commissioner under Act of Congress.—*U. S. vs. Ferreira*, 13 H., p. 40; *U. S. vs. Todd*, *id.*, p. 52. State and Federal Courts are as distinct as the Courts of two different nations, except where special provision is made by Congress.—*Rogers vs. Cincinnati*, 5 McL., p. 337. Inferior tribunals may be erected by Congress, and pending proceedings be transferred to them and from one tribunal to another.—*Stuart vs. Laird*, 1 Cr., p. 299. Abolishing fees of Justices did not affect those in office in District of Columbia at the time. They were judicial officers.—*U. S. vs. Moore*, 3 Cr., p. 160. The authority given to the Supreme Court by the Act establishing the judiciary of the United States, to issue writs of mandamus to public officers, is not warranted by the Constitution.—*Marbury vs. Madison*, 1 Cranch, p. 176. A mandamus against the Secretary of the Navy will not lie at the instance of an officer to enforce the payment of his pay.—*Brashear vs. Mason*, 6 Howard, p. 92.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

NOTE.—JURISDICTION must be clearly shown, or the case will be dismissed.—*U. S. vs. New Bed. Bri.*, 1 W. & M., p. 401; *U. S. vs. Ta-wan-ga-ca, Hemp.*, p. 304. The Federal Courts have powers as distinct in their exercise as those of foreign Governments.—*Ex Parte Robinson*, 6 McL., p. 355. Every Government may exercise jurisdiction over persons and property

within its limits, but not beyond them.—*Lincoln vs. Tower*, 2 McL., p. 473. All common law remedies between proper parties may be administered by the Federal Courts without legislation.—*Jolly vs. Terhaute Drawbridge Co.*, 6 McL., p. 237. States cannot enlarge, diminish, or in any way affect the jurisdiction of the Federal Courts. This is fixed by the Federal Constitution.—*U. S. vs. Drennen, Hemp.*, p. 320. The words of the Constitution, used affirmatively in declaring the original jurisdiction of the Sup. Court of the United States, are construed negatively as to all other cases.—*Ex Parte Vallandigham*, 1 Wall., p. 252. In cases affecting the foreign Consuls, the Sup. Court has original, but not exclusive jurisdiction.—*U. S. vs. Ravara*, 2 D., p. 297. The term "foreign nation" does not include an Indian tribe in the U. S., so as to entitle them to sue a State in the Union in the U. S. Supreme Court.—*Cherokee Nation vs. Georgia*, 5 Pet., p. 1. That his representative be sued only in the U. S. Courts, is a privilege of a foreign sovereign; it is not a personal privilege, and is not waived by not being raised in the Court below.—*Davis vs. Packard*, 7 Pet., p. 276. The 25th section of the Act of 24th September, 1789—giving the Sup. Court jurisdiction to review decisions of State Courts in certain cases—held constitutional.—*Cohens vs. Virginia*, 6 Wh., p. 264. Fifth section of Act of March 3d, 1863, for removal of certain causes from State into Circuit Courts, held constitutional in *Athon vs. Morton*, cited in 15 Am. L. R., p. 556; *Milton vs. Wilgus*, cited id., p. 557; but, so far as the Act of 1863 provides for an appeal to the Supreme Court from the Court of Claims it is unconstitutional.—*Gordon vs. U. S.*, 2 Wall., p. 501; same case, 14 Am. L. R., p. 111. Issuing process in violation of the Constitution confers no jurisdiction.—*Greene vs. Briggs*, 1 Curt., p. 311. Under the Civil Rights Bill of 1866, Federal Courts have jurisdiction to require observance of negro's right to testify, denied under State law.—*U. S. vs. Rhodes*, 16 Am. L. R., p. 233. Sup. Court has no jurisdiction to decide or try the question whether a particular law was passed or enacted by a State or not.—*Scott vs. Jones*, 5 H., p. 343. An inchoate French or Spanish title cannot be given effect to or tried by a State Court. Exclusive jurisdiction necessarily attends exclusive legislation.—*U. S. vs. Ames*, 1 W. & M., p. 76. Consent by State to Federal Government, or Federal Government to State, to exercise jurisdiction, confers the jurisdic-

tional right.—*Id.*; *U. S. vs. Cornell*, 2 Mass., p. 91; *U. S. vs. Davis*, 5 Mass., p. 356. The words of the Constitution declaring that “the judicial power shall extend to all cases of admiralty and maritime jurisdiction,” must be taken to refer to the admiralty and maritime jurisdiction of England.—*United States vs. McGill*, 4 Dall., p. 426. The question whether the legality of the acts of the heads of departments be examinable by Courts of justice, must always depend on the nature of the act.—*Marbury vs. Madison*, 1 Cranch, p. 137. In an action of ejectment between two citizens of the State where the lands lie, if the defendant set up an outstanding title in a British subject, which he contends is protected by treaty, and the highest State Court decides against the title thus set up, it is not a case in which a writ of error lies to the Supreme Court of the United States. This is not a case arising under the treaty, and the words of the Judiciary Act must be restrained by those of the Constitution.—*Owing vs. Norwood's Lessee*, 5 Cranch, p. 344. The appellate powers of the Supreme Court are given by the Constitution, but they are limited and regulated by the Acts of Congress.—*Durousseau vs. The United States*, 6 Cranch, p. 307. In what cases the Supreme Court of the United States has appellate jurisdiction from the decision of the highest Court of a State.—*Cohens vs. Virginia*, 6 Wheat., p. 264. A case of law or equity arises under the Constitution, or a law of the United States, whenever its correct decision depends upon the construction of either.—*Id.*, p. 379. The judicial power of every well constituted government must be coextensive with the legislative, and capable of deciding every judicial question growing out of the Constitution and laws.—*Id.* Where the words of the Constitution confer only appellate jurisdiction upon the Supreme Court, original jurisdiction is clearly not granted; but where the words admit of appellate jurisdiction, the power to take cognizance of the suit originally does not necessarily negative the power to decide upon it on an appeal, if it may originate in a different Court.—*Id.*, p. 397; also, *Osborn et al. vs. Bank of the United States*, 9 Wheat., p. 738. In every case to which the judicial power extends, and in which original jurisdiction is not expressly given, that power shall be exercised in the appellate, and only in the appellate, form.—*Id.* When the subject is presented to the Court by a party who asserts his right in the form prescribed by law, it then becomes a case.—*Osborn et al. vs. Bank of the United States*, 9 Wheat., p. 738. A corporation created

by, and transacting business in, a State, is to be deemed an inhabitant of the State, capable of being treated as a citizen for all purposes of suing and being sued.—Louisville, Cincinnati, and Charleston Railroad Co. vs. Letson, 2 Howard, p. 497. The Act of Congress of February 26th, 1845, extending the jurisdiction of the District Courts to certain cases on the Lakes and navigable waters connecting the same, is consistent with the Constitution of the United States.—Propeller Genessee Chief vs. Fitzhugh et al., 12 Howard, p. 443. The Courts of the United States, under the Constitution, have equity jurisdiction.—Neves et al. vs. Scott, 13 Howard, p. 268. The Federal Courts have no jurisdiction of common law offenses, and there is no abstract, pervading principle of the common law of the Union under which they can take jurisdiction.—Pennsylvania vs. Wheeling Bridge, 13 Howard, p. 519. Where relief can be given by the English chancery, similar relief may be given by the Courts of the Union.—Id.

ADMIRALTY AND MARITIME JURISDICTION.—The grant in the Constitution of the United States of all cases of admiralty and maritime jurisdiction does not extend to a cession of the waters in which those cases may arise, or of the general jurisdiction over them. The general jurisdiction adheres to the territory, as a portion of sovereignty not yet given away, and the residuary powers of legislation still remain in the State.—United States vs. Bevans, 3 Wheat., p. 336. The expression "admiralty and maritime jurisdiction" gives jurisdiction of all things done upon and relating to the sea.—De Lovio vs. Bosh et al., 2 Gallis, p. 468. The grant in the Constitution extending the judicial power "to all cases of admiralty and maritime jurisdiction," is neither to be limited to, nor to be interpreted by, what were cases of admiralty jurisdiction in England when the Constitution was adopted.—Waring vs. Clark, 5 Howard, p. 441. Admiralty jurisdiction in the Courts of the United States is not taken away because the Courts of common law may have concurrent jurisdiction. Nor is a trial by jury any test of admiralty jurisdiction. The subject matter of a contract or service gives jurisdiction in admiralty; locality gives it in tort or collision.—Id. In cases of *tort* or *collision* happening upon the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though it may be *infra corpus comitatus*, Courts of admiralty of the United States have jurisdiction.—Id. The admiralty and maritime jurisdiction granted to the Government by the Constitution

is not limited to tide waters, but extends to all public navigable lakes and rivers, where commerce is carried on between different States or with a foreign nation.—Propeller *Genessee Chief vs. Fitzhugh*, 12 Howard, p. 443. The eleventh amendment to the Constitution does not, it seems, extend to suits of admiralty or maritime jurisdiction.—*U. S. vs. Bright*, *Bright's Trial*, p. 190; s. c., *Bright*, p. 9. Jurisdiction over all admiralty cases is given to District Courts by the Constitution and laws of the United States, but a case in admiralty does not, in fact, arise under the Constitution and laws of the United States.—*Am. Ins. Co. vs. Canter*, 1 Pet., p. 512; *Roberts vs. Skolfield*, 8 Am. L. R., p. 156; *The Young America*, Newb., p. 101. Admiralty jurisdiction conferred upon Federal Courts is exclusive of those of the States.—*The Moses Taylor*, 4 Wall., p. 411; *The Hine vs. Trevor*, id., p. 556; and see *The Globe*, 2 Bl. C. C., p. 427; *Tupper vs. The Isabella*, 2 West., L. Mo., p. 253; *The John Richards*, Newb., p. 73; *Ashbrook vs. The Golden Gate*, id., p. 296. An action on a marine contract or a marine tort may be tried by proceeding "*in personam*" in the State Courts.—*The Hine vs. Trevor*, 4 Wall., p. 556. Misdemeanors on the high seas are constitutionally triable in the Federal Courts.—*U. S. vs. Crawford*, 1 N. Y. Leg. Obs., p. 388. Suits by and against the U. S. Bank are constitutionally triable in the Circuit Courts.—*Osborn vs. Bank of the U. S.*, 9 Wh., p. 738.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be put at such place or places as the Congress may, by law, have directed.

NOTE.—This provision is annotated under Article VI, "Mode of Trial."—See amendment, post, ratified Dec. 15th, 1791.

JURY.—The right of trial by jury is a fundamental law, made sacred by the Constitution, and cannot be legislated away.—2 Dall., p. 309. The Legislature of Iowa passed a law directing a Court to decide matters of fact without the intervention of a jury. This was inconsistent with the Constitution of the United States. *Webster vs. Reid*, 11 How., p. 437. By Article VII,

of amendments, post, this right of trial by jury is extended to suits at common law where the value in controversy exceeds twenty dollars.

## SECTION 3.

## Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

2. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

3. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

NOTE.—Where there is no allegiance there can be no treason.—*Shanks vs. Dupont*, 3 Pet., p. 251. Therefore an alien not naturalized cannot commit treason against the United States.—*U. S. vs. Vallito*, 2 D., p. 370; same case, *Whart. St. Tr.*, p. 185. To obtain an object of high public nature or concern by insurrection, force, or violence, is levying war against the United States.—*U. S. vs. Fries*, *Whart. St. Tr.*, p. 458. But assemblages arrayed in warlike manner for private purposes is not treason.—*Id.* Unless accompanied with overt acts, a conspiracy to levy war is not treason, but any force connected with such intent is levying war.—*Id.*, and *Ex Parte Bollman*, 4 Cr., p. 75; *U. S. vs. Burr*, 2 *Burr's Trial*, p. 407. There must be an actual levying war to constitute treason.—*Id.* Armed men mustered in military array in a body for treasonable purposes, and marching or doing any other act in part execution of the purpose, is an overt act of treason in levying war.—*U. S. vs. Griener*, 24 *Law Rep.*, p. 92; same case, 4 *Phila.*, p. 396. Adhering to insurgents in a domestic insurrection is not treason, in adhering to enemies of the U. S., under the Act of 1790.—*U. S. vs. Chenewith*, 4 *West L. Mo.*, p. 165. But it may be levying war.—*Id.* Going from an enemy's squadron to the shore for peaceably procuring provision for the enemy is not an overt act of treason. It is an overt act of treason to carry provisions to the enemy.—*U. S. vs. Pryor*, 3 *W. C. C.*, p. 234. So is delivering up prisoners and deserters to the enemy. Well grounded fear of life will alone excuse this act.—*U. S. vs. Hodges*, 2 *Wh. Cr. Cas.*, p. 477. Intention is involved



in the act.—*Id.* Preventing, or an insurrection to prevent the execution of a law of Congress, is treason by levying war.—*U. S. vs. Mitchell*, 2 D., p. 348; *U. S. vs. Fries*, Whart. St. Tr., p. 458; 2 Wall., Jr., C. C., p. 134. There must be an overt act, proved by two witnesses, to constitute treason; a bare conspiracy is not.—*Id.*, p. 356; 1 Car. L. Rep., p. 349; 1 Burr's Trial, p. 14. A conspiracy for that purpose, and an actual resistance, by force or intimidation, by numbers, of a law of the U. S., constitutes treason.—*U. S. vs. Hanway*, 2 Wall., Jr., C. C., p. 140. For a personal or private purpose, and in particular instances, conspiring to or actually resisting the execution of a law is not treason.—*Id.*; also, *U. S. vs. Hoxie*, 1 Pa., p. 265. *Intention* to commit treason is a different crime from the *actual commission* of the crime.—*U. S. vs. Burr*, 1 Burr's Trial, p. 14. An aider and abettor cannot be convicted until the actual perpetrator of the act is convicted.—*U. S. vs. Burr*, 1 Burr's Trial, p. 14.

## ARTICLE IV.

## STATE ACTS.

## SECTION 1.

*Evidence of acts and official records of States.*

## SECTION 2.

*Privileges of citizens.*

1. Entitled to same alike in every State.
2. Fugitives from justice.
3. Fugitives from servitude.

## SECTION 3.

*New States.*

1. Admission of.
2. Power of United States over territorial and other property.

## SECTION 4.

*United States to guarantee to each State a republican form of government and protect against invasion.*

## SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general

*Evidence of acts and official records of States.*

laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

NOTE.—Under this section the Acts of May 26th, 1790, March 27th, 1804, and March 2d, 1849, were passed, and are the general laws of Congress on this subject. A certified copy of a judgment rendered in another State, attested by the Clerk under seal of the Court, and the Judge of the Court certifies that the attestation is in due form of law, is sufficient on which to maintain an action in this State.—*Thomson vs. Marrow*, 1 Cal., p. 428. The certificate is only required to state the main facts made necessary by the Act. When the offices of Judge and Clerk are exercised by the same person, as a Surrogate.—*Low vs. Burrows*, 12 Cal., p. 181. When a requisition certifies that the “affidavit is duly authenticated according to the laws of said State” it is sufficient.—*Manchester on Habeas Corpus*, 5 Cal., p. 237.

## SECTION 2.

Privileges  
of citizens.

1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

NOTE.—In the matter of *Manchester on Habeas Corpus*, 5 Cal., p. 237, it was held by the Supreme Court of the State of California, that a certificate in a “requisition” that the “affidavit is duly authenticated according to the laws of said State” is sufficient. This section is greatly extended by the fourteenth amendment, ratified July 28th, 1868, given post, as to rights of citizens and who constitute.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NOTE.—Slavery no longer exists.—See amendments to Constitution of the United States, Article XIII. The only subject to which this portion of the section applies is to apprentices. The following decisions apply to this provision prior to the adoption of the amendment:

FUGITIVES FROM LABOR, ETC.—The owner of a fugitive slave has the same right to seize and take him in a State to which he has escaped or fled that he had in the State from which he escaped.—*Prigg vs. The Commonwealth of Pennsylvania*, 16 Peters, p. 539. The second section of Article IV of the Constitution does not extend to a slave voluntarily carried by his master into another State and there left, but to slaves escaping from one State into another.—*Butler vs. Hopper*, 1 Wash. C. C. R., p. 499. Under the Act of February 12, 1793, respecting fugitives, etc., under a charge for harboring and concealing, the notice need not be in writing by the claimant or his agent, but may be given verbally.—*Jones vs. Van Zandt*, 5 Howard, p. 215. Clear proof of the knowledge of the defendant that he knew such person was a slave, etc., is sufficient to charge him with notice.—*Id.* An overt act, so marked in its character as to show an intention to elude the vigilance of the master, and calculated to obtain such object, is a harboring of the fugitive within the statute.—*Id.* Said Act is constitutional, and is not repugnant to the ordinance of 1787.—*Id.*

### SECTION 3.

1. New States may be admitted by the Congress New States into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

## SECTION 4.

United States to guarantee to each State a republican form of government and protect against invasion.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

## ARTICLE V.

## AMENDMENTS.

## SECTION 1.

*Manner of making Amendments to Constitution.*

## SECTION 1.

Manner of making amendments to Constitution.

1. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *provided*, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

## PROMISCUOUS PROVISIONS.

## SECTION 1.

*General provisions.*

1. Debts.
2. Supreme law of the land.
3. Oath to support Constitution. No religious test.

## SECTION 1.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation. General provisions.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

NOTE.—*Religion, establishment of, etc.*—The Legislature may authorize and provide for religious and benevolent corporations to enable them to pursue their objects, to hold and manage the necessary property therefor, and to regulate their affairs.—*Terret et al. vs. Taylor et al.*, 9 Cranch, p. 49.

## ARTICLE VII.

## RATIFICATION OF CONSTITUTION.

## SECTION 1.

*What sufficient for ratification.*

## SECTION 1.

1. The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same. What sufficient for ratification

DONE in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON,  
NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM,  
RUFUS KING.

CONNECTICUT.

WILLIAM SAMUEL JOHN-  
SON,  
ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WILLIAM LIVINGSTON,  
DAVID BREARLY,  
WILLIAM PATTERSON,  
JONATHAN DAYTON.

PENNSYLVANIA.

BENJAMIN FRANKLIN,  
THOMAS MIFFLIN,  
ROBERT MORRIS,  
GEORGE CLYMER,  
THOMAS FITZSIMONS,  
JARED INGERSOLL,  
JAMES WILSON,  
GOUVERNEUR MORRIS.

DELAWARE.

GEORGE READ,  
GUNNING BEDFORD, JR.,  
JOHN DICKINSON,  
RICHARD BASSETT,  
JACOB BROOM.

MARYLAND.

JAMES M'HENRY,  
DANIEL OF ST. THO. JENIFER,  
DANIEL CARROLL.

VIRGINIA.

JOHN BLAIR,  
JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT,  
RICHARD DOBBS SPAIGHT,  
HUGH WILLIAMSON.

SOUTH CAROLINA.

JOHN RUTLEDGE,  
CHARLES C. PINCKNEY,  
CHARLES PINCKNEY,  
PIERCE BUTLER.

GEORGIA.

WILLIAM FEW,  
ABRAHAM BALDWIN.

Attest: WILLIAM JACKSON, Secretary.

## AMENDMENTS.

ARTICLE I. RESTRICTION ON POWER OF CONGRESS.

II. RIGHT TO BEAR ARMS.

III. BILLETING SOLDIERS.

IV. SEIZURES, SEARCHES, AND WARRANTS.

V. CRIMINAL PROCEEDINGS AND CONDEMNATION OF  
PROPERTY.

VI. MODE OF TRIAL IN CRIMINAL PROCEEDINGS.

**ARTICLE VII. TRIAL BY JURY.****VIII. BAILS—FINES—PUNISHMENTS.****IX. CERTAIN RIGHTS NOT DENIED THE PEOPLE.****X. STATES RIGHTS.****XI. JUDICIAL POWERS.****XII. ELECTION OF PRESIDENT AND VICE PRESIDENT.****XIII. SLAVERY.****XIV. CITIZENSHIP, REPRESENTATION, AND PAYMENT OF PUBLIC DEBT.****XV. ELECTIVE FRANCHISE.**

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**ARTICLE I.****RESTRICTIONS ON POWER OF CONGRESS.**

**SECTION 1.** Free exercise of religion, speech, etc., and right of people to assemble.

**SECTION 1.** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.—[Proposed Sept. 25th, 1789; ratified Dec. 15th, 1791.]

Restrictions on power of Congress.

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**ARTICLE II.****RIGHT TO BEAR ARMS.**

**SECTION 1.** Right not to be denied to people.

**SECTION 1.** A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.—[Id.]

Right to bear arms.

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**ARTICLE III.****BILLETING OF SOLDIERS.**

**SECTION 1.** No soldier to be billeted, etc.

**SECTION 1.** No soldier shall, in time of peace, be quartered in any house, without the consent of the owner;

Billeting of soldiers.

nor in time of war, but in a manner to be prescribed by law.—[Id.]

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#### ARTICLE IV.

##### SEIZURES, SEARCHES, AND WARRANTS.

SECTION 1. Unreasonable searches, seizures, and warrants prohibited.

Seizures,  
searches,  
and  
warrants.

SECTION 1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon reasonable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.—[Id.]

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#### ARTICLE V.

##### CRIMINAL PROCEEDING AND CONDEMNATION OF PROPERTY.

SECTION 1. No person to be held to answer for certain crimes except on indictment. Exception—not to be twice tried for same offense; not to be a witness against himself; right to compensation for property condemned.

Criminal  
proceed-  
ings and  
condemna-  
tion of  
property.

SECTION 1. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.—[Id.]

NOTE.—*Private property shall not be taken for public use, etc.*—The provisions in the fifth amendment to the Constitution, declaring that private property should not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is



not applicable to the Legislatures of the States.—*Barrow vs. The Mayor and City Council of Baltimore*, 7 Peters, p. 243.

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ARTICLE VI.

MODE OF TRIAL IN CRIMINAL PROCEEDING.

SECTION 1. Accused entitled to speedy trial; to confront witnesses; to have counsel; place of trial, etc.

SECTION 1. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.—[Id.

Mode of trial in criminal proceeding.

NOTE.—The Federal Courts are held to have no common law jurisdiction in criminal cases in the following decisions: *U. S. vs. Worrall*, 2 D., p. 393; s. c., *Whart. St. Tr.*, p. 189, Peters, J., dissenting; *U. S. vs. Hare*, 2 Wh. Cr. Cas., p. 300; *U. S. vs. Hudson*, 7 Cr., p. 32; *U. S. vs. Coolidge*, 1 Wh., p. 415; s. c., 1 Gall, p. 488; *Penn. vs. Wheeling and Belmont Br. Co.*, 13 H., p. 519; *U. S. vs. Clark*, 1 Gall, p. 497; *U. S. vs. McKenzie*, 1 N. Y. Leg. Obs., p. 374; *U. S. vs. Wilson*, 3 Bl. C. C., p. 435; *U. S. vs. Ramsey, Hemp.*, p. 481; *U. S. vs. Barney*, 3 Int. R. Rec., p. 46. *Contra*—*U. S. vs. McGill*, 4 D., p. 429; *U. S. vs. Henfield*, *Whart. St. Tr.*, p. 85; *U. S. vs. Williams*, id., p. 652; *Serg. Const. L.*, p. 272; *U. S. vs. Smith*, 6 Dane Abr., p. 718; *U. S. vs. Meyer*, *Whart. Proc.*, Sec. 955, n. The jurisdiction is in the State Courts alone, of common law offenses, though the General Government be the party thereby aggrieved.—*U. S. vs. Hutchinson*, 7 Penn., L. J., p. 365. Nothing which is not criminal by statute can be punished under the laws of the United States.—*U. S. vs. Libby*, 1 W. & M., p. 222; *U. S. vs. New Bed. Bri. Co.*, id., p. 401; *U. S. vs. Lancaster*, 2 McL., p. 431. According to forms of the common law, Federal Courts may proceed against an offender against the law of nations.—*U. S. vs. Henfield*, *Whart. St. Tr.*, p. 85. So a violation by a citizen of

a treaty with a foreign State may be tried in a Federal Court by indictment.—Id. So sending threatening letters by foreign Consul.—U. S. vs. Ravara, 2 D., p. 299, note. Circuit Court, U. S., in District Columbia, has jurisdiction of common law offenses.—U. S. vs. Watkins, 3 Cr. C. C., p. 441.

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## ARTICLE VII.

### TRIAL BY JURY.

SECTION 1. Right of trial by jury in civil actions.

Trial by jury.

SECTION 1. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise reëxamined in any Court of the United States than according to the rules of common law.—[Id.

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## ARTICLE VIII.

### BAIL—FINES—PUNISHMENTS.

SECTION 1. Not to be excessive.

Bails, fines, punishments.

SECTION 1. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.—[Id.

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## ARTICLE IX.

### CERTAIN RIGHTS NOT DENIED TO THE PEOPLE.

SECTION 1. Rights of people not disparaged by Constitution.

Certain rights not denied to the people.

SECTION 1. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.—[Id.

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## ARTICLE X.

### STATES RIGHTS.

SECTION 1. Certain powers reserved to the States or to the people.

SECTION 1. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.—[Id.]

States rights.

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ARTICLE XI.

JUDICIAL POWERS.

SECTION 1. Limitation on.

SECTION 1. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by the citizens of another State, or by citizens or subjects of any foreign State.—[Proposed March 5th, 1794; ratified January 8th, 1798.]

Judicial powers.

NOTE.—This amendment does not, it seems, extend to suits of admiralty or maritime jurisdiction.—See *United States vs. Bright*, *Bright's Trial*, p. 190; same case, *Bright*, p. 9.

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ARTICLE XII.

ELECTION OF PRESIDENT AND VICE PRESIDENT.

SECTION 1. Manner of election, etc.

SECTION 1. The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of

Election of President and Vice President.

Same.

votes for President shall be the President, if such a number be a majority of the whole number of Electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.—[Proposed Dec. 12th, 1803; ratified Sept. 25th, 1804.

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ARTICLE XIII.

SLAVERY.

SECTION 1. Slavery prohibited.

2. Enforcement of this Article by Congress.

Slavery  
prohibited.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

**SEC. 2.** Congress shall have power to enforce this Article by appropriate legislation.—[Declared ratified December 18th, 1865. U. S. Statutes at Large, Vol. 13, p. 775.]

Enforcement of this Article by Congress.

#### ARTICLE XIV.

##### CITIZENSHIP, REPRESENTATION, AND PAYMENT OF PUBLIC DEBT.

**SECTION 1.** Who are citizens—rights of.

2. Apportionment of representation among the several States.
3. Certain persons disqualified from holding office; removal of disability, how effected.
4. Payment of public debt not to be questioned; debts incurred in aid of rebellion not to be assumed.
5. Power of Congress to enforce this Article.

**SECTION 1.** All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Who are citizens—rights of.

**SEC. 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Apportionment of representation among the several States.

Certain persons disqualified from holding office, etc.

SEC. 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

Payment of public debt not to be questioned; debts incurred in aid of rebellion not to be assumed.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Power of Congress to enforce this Article.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.— [Declared ratified July 28th, 1868. U. S. Statutes at Large, Vol. 15, pp. 709-11.

NOTE.—The case of *The People vs. Brady*, 40 Cal., p. 198, et seq., reviews at considerable length the apparent conflict of certain statutes of this State with this Article, and reviews and overrules the case of *The People vs. George Washington*, 36 Cal., p. 658.

FOREIGNERS.—The right of the State to tax foreigners for the privilege of extracting precious metals from the mines of this State—known here as the “Foreign Miners’ License Act”—was held to be superseded by the fourteenth amendment of the United States Constitution, by *Sawyer, J.*, of United States Circuit Court, in the case of *United States vs. John Jackson, Tax Collector of Trinity County*, decided in ———, 1871, before Judges *Sawyer* and *Hoffman*.

## ARTICLE XV.

## ELECTIVE FRANCHISE.

SECTION 1. Right of all citizens to vote.

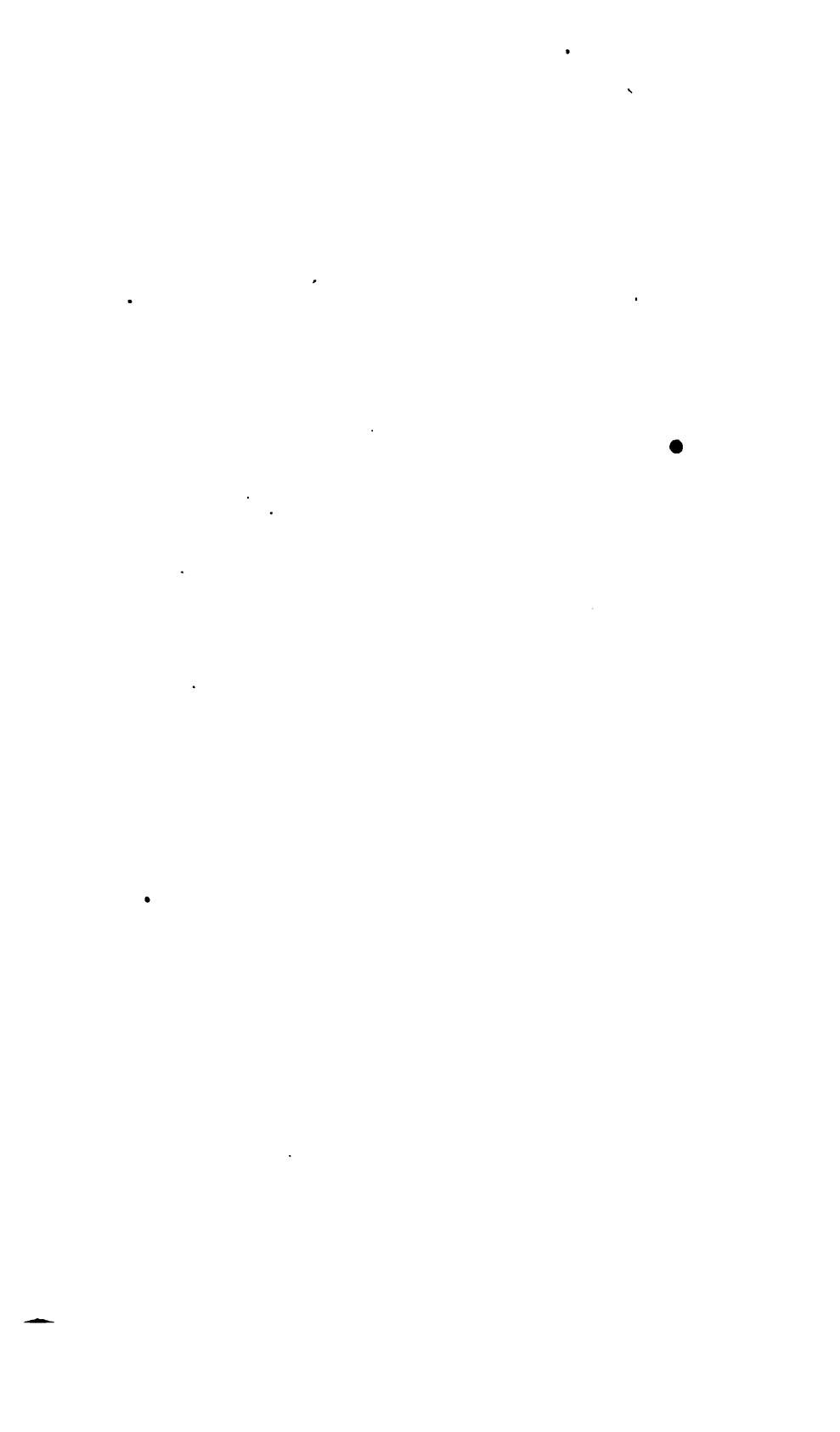
2. Power of Congress to enforce this Article.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude.

Right of  
all citizens  
to vote.

SEC. 2. The Congress shall have power to enforce this Article by appropriate legislation.—[U. S. Statutes at Large, Vol. 15, p. 346.]

Power of  
Congress to  
enforce this  
Article.





## INDEX TO THE CONSTITUTION OF THE UNITED STATES.

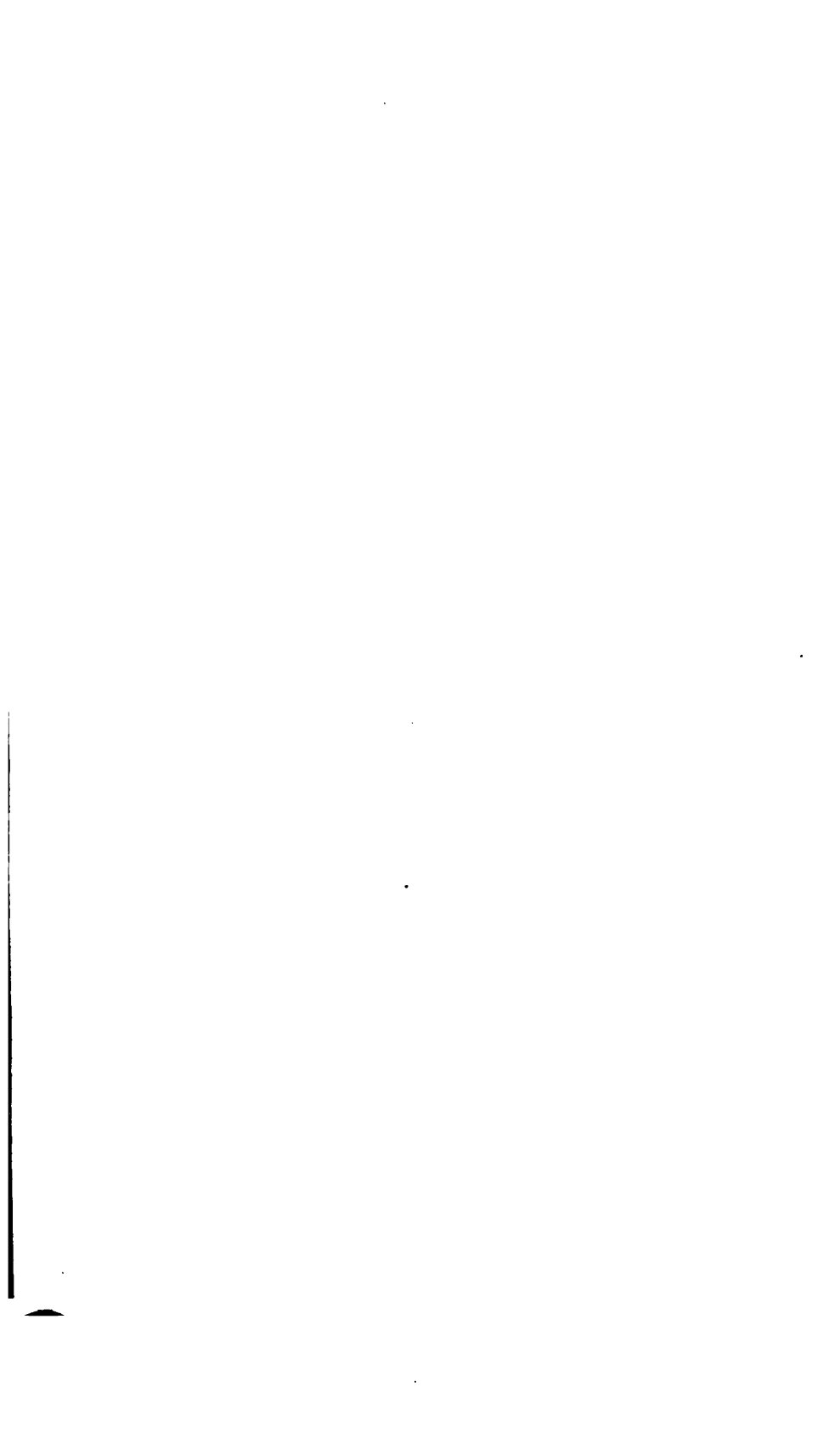
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# CONSTITUTION OF CALIFORNIA.

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ADOPTED BY THE CONVENTION, OCTOBER TENTH, EIGHTEEN HUNDRED AND FORTY-NINE; RATIFIED BY THE PEOPLE, NOVEMBER THIRTEENTH, EIGHTEEN HUNDRED AND FORTY-NINE; PROCLAIMED, DECEMBER TWENTIETH, EIGHTEEN HUNDRED AND FORTY-NINE; AND AMENDED, EIGHTEEN HUNDRED AND SIXTY-TWO.

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## PREAMBLE.

WE, the People of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

NOTE.—The term “sovereignty” expresses the supreme political authority of an independent State or Nation, and whatever rights are essential to the existence of this authority are sovereign rights—such are the rights to declare war, to make treaties of peace, to levy taxes, to take private property for public use, and the like. In this country sovereignty resides in the people, and its authority is exercised through the Federal and State Governments. To the Federal Government has been delegated certain rights of sovereignty, and the exercise of all other sovereign rights is reserved by the people of the States, or vested by them in their local governments. To say that a State of the Union is sovereign, is but to say that such a State possesses all the rights and powers essential to the existence of an independent political organization, except as they are withdrawn by the provisions of the Federal Constitution.—*Moore vs. Smaw, and Fremont vs. Flower, 17 Cal., p. 199.* At common law the right to the mines of precious

metals was not an incident of sovereignty, but a personal prerogative of the King, which could be alienated at his pleasure. The ownership of the precious metals found in public or private lands stands in no different relation to the sovereignty of a State than any other property which is the subject of barter and sale.—*Moore vs. Smaw*; *Fremont vs. Flower*, 17 Cal., p. 199. The State Constitution is not a grant of power nor an enabling Act to the Legislature. It is a limitation on the general powers of a legislative character, and restrains only so far as the restriction, either by express terms or by necessary implication.—*Bourland vs. Hildreth*, 26 Cal., p. 183; *Smith vs. Judge Twelfth District Court*, 17 Cal., p. 547; *People vs. Rogers*, 13 Cal., p. 159; *People vs. Coleman*, 4 Cal., p. 46; *Hobart vs. Supervisors of Butte*, 17 Cal., p. 30; *People vs. Bigler*, 5 Cal., p. 23; *People vs. Seymour*, 16 Cal., p. 332; *Bourland vs. Hildreth*, 26 Cal., p. 162. The legislative department of our State Government is not like the "Congress of the United States," restricted in its sphere of action by a fixed chart of delegated powers. Its power represents the independent sovereignty of the people of the State, and is supreme and unlimited in all legitimate subject matters of legislation, and controlled only by such restrictions as are imposed by the organic law of the State.—*Beals vs. Amador County*, 35 Cal., p. 630. As the State Constitution is not a grant of power, an express enumeration of legislative powers is not an exclusion of others not named, unless the enumeration is accompanied by negative terms.—*Ex Parte McCarthy*, 29 Cal., p. 396. The Constitution is a law, and the judiciary, from the very nature of the powers given it, must construe it.—*Nougues vs. Douglass*, 7 Cal., p. 65. Courts may declare the *action* of the Legislature unconstitutional, when that action violates the supreme law; but Courts have no means to *avoid* the effects of *non-action*.—*Myers vs. English*, 9 Cal., p. 341. In the exposition of Constitutions as of inferior laws, the solemn, deliberate, and long settled precedents of Courts, and the practice and acquiescence of governments and people, should possess controlling weight.—*Ferris vs. Coover*, 11 Cal., p. 178. Judicial interpretation of a constitutional provision made near the time of its adoption is strong evidence that the people in adopting it understood and intended it to be as interpreted.—*Knowles vs. Yeates*, 31 Cal., p. 82. When the convention, in framing the organic law of the State, thought proper to borrow provisions from the Constitutions of other States, which provisions had already received judi-



cial interpretation, it is safe to presume that they were adopted in view of such interpretation.—*People vs. Coleman*, 4 Cal., p. 46. Constitutions, like statutes, must be construed, if possible, to give some force and effect to each of their provisions.—*French vs. Teschemaker*, 24 Cal., p. 539. An Act of the Legislature may be constitutional in part and unconstitutional in part.—*People vs. Hill*, 7 Cal., p. 104; *People vs. Burbank*, 12 Cal., p. 393; *Lathrop vs. Mills*, 19 Cal., p. 513; *Robinson vs. Bidwell*, 22 Cal., p. 397. A law which cannot take effect as to one part of its subject matter because it is unconstitutional as to such part, may take effect as to another part of its subject matter not obnoxious to the Constitution.—*Mills vs. Sargent*, 36 Cal., p. 379. A section of an Act which is unconstitutional but independent, and which does not enter in the general object and scope of the Act, may be stricken out, and will not vitiate the portions which are constitutional.—*French vs. Teschemaker*, 24 Cal., p. 545; *Robinson vs. Bidwell*, 22 Cal., p. 379; *Lathrop vs. Mills*, 19 Cal., p. 513. A clause in an Act containing an unconstitutional provision, if the clause enter so entirely into the scope and design of the whole Act that it would be impossible to maintain it with the obnoxious provision, will vitiate the whole Act.—*Reed vs. Omnibus R. R. Co.*, 33 Cal., p. 212. When Courts declare retrospective laws void, their action is based upon the ground that such laws are in conflict with some vested right secured by some constitutional guaranty, or protected by principles of universal justice.—*Galland vs. Lewis*, 26 Cal., p. 47. An Act of the Legislature should not be declared unconstitutional unless there is a clear repugnance between the Act and the Constitution. If there is a reasonable doubt whether the Act is repugnant to the Constitution, the Courts will sustain the validity of the Act.—*Bourland vs. Hildreth*, 26 Cal., p. 162. An Act of the Legislature must be clearly and manifestly repugnant to some provision of the Constitution, or a Court will not declare it invalid.—*People vs. Sassovich*, 29 Cal., p. 480.

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Inalienable rights.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

NOTE.—In *Ex Parte Newman*, 9 Cal., p. 502, the "Sunday Law" of April 10th, 1858, was held to be in violation of this section, but in *Ex Parte Andrews*, 18 Cal., p. 678, the "Sunday Law" of May 20th was held constitutional. In May, 1868, the Trustees of the City of Sacramento passed the following ordinance:

"ORDINANCE No. 91.—To prohibit noisy amusements and to prevent immorality. Passed May 11, 1868.

"The Board of Trustees of the City of Sacramento ordain as follows:

"SECTION 1. It shall be unlawful within the city, in the night time, after twelve o'clock midnight, for any person to play or make a noise upon any musical instrument in any drinking saloon, or beer cellar, or to permit or allow the same by the proprietor, agent, or manager thereof.

"SEC. 2. It shall be unlawful for any female person, in the night time, after twelve o'clock midnight, to be in any public drinking saloon, beer cellar, or billiard room, within said city, where vinous, malt, or spirituous liquors are sold or given away, to be drank on the premises."

Under this ordinance Nellie Smith and Annie Keating were convicted. They sued out a writ of habeas corpus, returnable before Justice Sanderson of the Supreme Court, and upon the return of the writ it was in their behalf contended that the ordinance was repugnant to the first section of the first Article of the State Constitution. Mr. Justice Sanderson upon this point, Chief Justice Sprague and Justice Sawyer approving, said (38 Cal., p. 704):

"Governments are formed for the purpose of securing and protecting men in the enjoyment of their natural rights, and they would fail of accomplishing that object if the power to regulate or prescribe the mode in which such rights are to be exercised be not lodged in the law making department. In short, there could be no government without such power, for without it all men would be in a state of nature—that is to say, without any restraint upon their conduct except their own wills and the forcible opposition of their fellows. Hence, when men who come together for the purpose of adopting a form of government and establishing a system of laws stipulate that the rights of life, liberty, property, and the pursuit of safety and happiness are inalienable, or shall remain inviolate forever, they are not to be understood as meaning that those rights shall not be at all interfered with by the law-making power. On the contrary, their language is to be interpreted in view of the object which has called it forth, or as meaning that those rights are not to be interfered with, except so far as the ends and objects of government may require. This section is not to be read by itself, but as a part only of the Constitu-

tion; and thus read, the obvious import of the whole is, that in order that these rights may be made secure, and that we may be protected in their enjoyment, we agree that the Government about to be established may pass all needful or reasonable rules and regulations for their security and enjoyment, without any power, however, to destroy or unnecessarily restrict or impair their reasonable exercise. Hence, this provision of the Constitution is not to be understood as putting life or liberty entirely beyond the reach of the Government if, from misconduct, the general welfare of the community demands its sacrifice or restraint; or as allowing every one to acquire, possess, and enjoy property after his own unregulated manner and according to his uncontrolled will, but in such a manner and by such means as the general welfare of the community may require him to observe; or as allowing every one to seek safety and happiness in his own way, or according to his own notion, but by such ways and methods as the general good may demand. In short, while the exercise of these rights cannot be denied to any one, it may be regulated. The Constitution recognizes them as inalienable, and provides that they shall remain inviolate, but, at the same time declares that they must be exercised according to the maxim, *sic utere tuo, ut alienum non laedas*, which lies at the foundation of the social compact. While every man is free and independent, and may enjoy and defend life and liberty, still he must do so in a way which does not interfere with the same right in other persons; while he may acquire, possess, and protect property, he must do so in a way and by means which will not prevent others from doing the like; while he may pursue and obtain safety and happiness, he cannot be allowed to do so in a manner which may endanger or unreasonably impair the safety and happiness of others; or, generally, while every one is to be secure in the exercise and enjoyment of all these rights, he may be restrained or prohibited from exercising them in any manner which will interfere with a reasonable exercise of the same rights by other persons. Hence it is, that the Legislature is not only allowed, but required, among other things, to pass laws for the protection of life, liberty, property, and the pursuit of safety and happiness. Hence come all our laws against what are called crimes: crimes against the Government and people—as treason; against the persons of individuals—as murder and manslaughter; against property—as larceny, robbery and arson; against public justice—as perjury and bribery; against the

public peace and tranquility—as routs and riots; against public morality, health and police—as bigamy, incest, prostitution, and public nuisances. There cannot be legislation upon these topics, or any of them, without interfering, in a certain sense, and to a certain extent, with the natural rights of persons; but so long as such legislation is reasonable and necessary to accomplish any of the ends of the social compact, it cannot be considered as repugnant to the Constitution. Instead of being repugnant, such legislation is indispensable to the preservation and inviolability of the very rights in question. Every act which may tend to impair their exercise beyond what is needful for the general good may be prohibited. Of these, there are some which, by the common consent of mankind, are bad and mischievous in themselves—the *mala in se* of the common law—and others which may become so under certain relations and conditions, and which, therefore, the Legislature may prohibit, as necessity or occasion may require—the *mala prohibita* of statute law. It is not to be supposed that the entire field of public offense has yet been covered by apt legislation. Vice is ingenious, and disguises itself in a variety of forms, for the purpose of evading existing laws. Things once regarded as harmless become vicious when contemplated from the level of a higher civilization, and legislation, if not in advance, must keep even pace with public sentiment, and to that end the requisite power is not denied to the Legislature.

“It not being then, the purpose of the Constitution to inhibit all legislation affecting the natural rights of persons, but only such as may tend to their destruction or unreasonable restraint, the next question is, as to who is to be the judge of the necessity or reasonableness of prohibitory laws. Primarily, it lies with the people, when they adopt their Constitution, or establish their form of government. They may then establish such rules as they think proper; but, this being done, the residue of the power must be lodged in the law-making department of the Government. The power to determine what is necessary and appropriate legislation to accomplish the ends of government must necessarily be lodged in some body or department, and, by the same necessity, that body must be the Legislature, or the law-making power, subject to such restraints as may be imposed, as in the veto of the Executive, and the power of the Judiciary to annul, by its judgment, such laws as it may deem repugnant to the Constitution. If the Legislature abuses this power—the power

to make laws, and to judge of their necessity and reasonableness—the remedy lies, under our form of government, with the people, through the ballot box; and, if that proves ineffectual, a further remedy lies in revolution, or the right which the people have to change their form of government whenever it becomes oppressive, or fails to afford that security for the rights of men which it was intended to provide.

“In view of these fundamental principles, Legislatures have enacted a variety of laws which, undoubtedly, in a general sense, affect the right of life, liberty, property, safety, and happiness, by way of restraint. Of such are laws regulating the slaughter of animals, the interment of the dead, the erection of buildings in cities and towns of inflammable materials, the manufacture and keeping of gunpowder and other explosive compounds, the vending of poison and other noxious drugs, the sale of intoxicating beverages to certain classes of persons, as Indians, and even to all classes of persons—as in the case of the prohibitory liquor laws of Maine and Massachusetts. Not of the least importance among such laws are those which are designed to promote the public health, by creating Boards of Health, with extraordinary powers over persons and property; by establishing quarantine and taking other summary measures to prevent the spread of contagious diseases; also, laws designed to promote public peace and good order, and public decency and morality, particularly in cities and incorporated towns—such as laws against nuisances, noisy and barbarous amusements; indecent exposure of the person, and the keeping and frequenting houses of ill fame. Among the most notable of these prohibitory laws, and the one which goes, perhaps, to the extreme of legislative power in the direction under consideration, is that which prohibits the transaction of secular business on the Lord’s day. The constitutionality of some of this legislation has been debated and doubted; but I believe the general opinion now is, that none of it is opposed, but, on the contrary, that all of it is not only consistent with, but essential to the most perfect enjoyment, in a constitutional sense, of the natural rights of persons.

“The foregoing principles being elementary, I deem it unnecessary to dwell longer upon their consideration, or to cite cases in their support. I have not referred to them because they are doubtful or debatable, but because the necessity has been forced upon me by the line of argument which has been adopted by counsel.

“So far, then, as these cases turn upon the first point made by counsel, it only remains for me to examine this ordinance, so far as it affects the petitioners, by the light of the foregoing principles, and declare whether it is repugnant to them, or, on the contrary, is a constitutional contribution to their support; and on that head, in view of what has already been said, but little remains to be added.”

**SEC. 2.** All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Popular  
govern-  
ment.

NOTE.—Every law must have a uniform operation upon all citizens, persons, or things of any class upon which it purports to take effect. It must not grant to any citizen or class of citizens privileges which upon the same terms shall not equally belong to all citizens. *Brooks vs. Hyde*, 37 Cal., p. 366. In commenting upon this section Justice Sanderson, in *Ex Parte Smith & Keating* (38 Cal., p. 710), says:

“The best commentary upon the construction and meaning of the eleventh section of the first Article of the Constitution of this State, which declares that ‘every law of a general nature shall have a uniform operation,’ with which I have ever met, is found in the context of the instrument from which it was borrowed, namely, the sixth section of the first Article of the Constitution of Iowa, which reads as follows: ‘All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen or class of citizens privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.’ Here the precise language of our Constitution is used, but it is accompanied by other language, as part of the same sentence and expressive of the same idea, which serves to disperse the cloud which, by reason of the ‘glittering generality’ of the language employed, hangs about the meaning of our Constitution. The meaning of the Constitution of Iowa, and, therefore, the meaning of ours, is obvious from the latter clause of the former Constitution. Its meaning, as has been repeatedly declared by the highest judicial tribunal in the State, is not that general laws must act alike upon all subjects of legislation, or upon all citizens and persons, but that they shall operate uniformly,

or in the same manner upon all persons who stand in the same category; that is to say, upon all persons who stand in the same relation to the law, in respect to the privileges and immunities conferred by it, or the acts which it prohibits.—*Smith vs. Judge Twelfth Judicial District*, 17 Cal., p. 554; *French vs. Teschemacher*, 24 id., p. 544; *Bourland vs. Hildreth*, 26 id., p. 256; *Brooks vs. Hyde*, 37 Cal., p. 366. It was not intended by this provision to prevent legislation which is local in its operation or special in its effect. It was not intended to overturn the laws of nature, or disturb the relations of cause and effect, or obliterate distinctions, where, from the very nature and necessity of things, distinctions must exist. It was not intended that all differences founded upon class or sex should be ignored. This must be so from the very nature of things, and from the universal custom and practice of law makers."

**Jury trial.** SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.

NOTE.—*Smith vs. Pollock*, 2 Cal., p. 92; *Russel vs. Elliot*, 2 Cal., p. 245; *Exline vs. Smith*, 5 Cal., p. 112; *Gillespie vs. Benson*, 18 Cal., p. 409; *Cahoon vs. Levy*, 5 Cal., p. 294; *Smith vs. Billet*, 15 Cal., p. 23; *Doll vs. Feller*, 16 Cal., p. 432; *Waltham vs. Carson*, 10 Cal., p. 178; *Doll vs. Anderson*, 27 Cal., p. 248; *Bodley vs. Furgeson*, 30 Cal., p. 511; *Brewster vs. Bours*, 8 Cal., p. 501; *Walker vs. Sedgewick*, 5 Cal., p. 192. The right of trial by jury applies only to civil and criminal cases in which issues of fact are joined. It has no application to proceedings for ascertaining the value of private property taken for public use.—*Koppikus vs. State Capitol Commissioners*, 16 Cal., p. 248. The right of trial by jury in all common law actions is secured by the Constitution, hence a statute authorizing a reference without the consent of the parties is void.—*Grim vs. Norris*, 19 Cal., p. 140.

Religious  
worship,  
and  
liberty of  
conscience.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so con-



strued as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

NOTE.—The Constitution does not make void legislation, the effect of which is to promote religion or advance the interest of a particular sect.—*Ex Parte Andrews*, 18 Cal., p. 678; per contra, *Ex Parte Newman*, 9 Cal., p. 502. A witness is competent without respect to his religious sentiments.—*Fuller vs. Fuller*, 17 Cal., p. 605.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Habeas corpus.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

Excessive bail, fines, and punishments.

SEC. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.

All offenses bailable—  
one exception.

NOTE.—Admission to bail in capital cases where the proof is evident or the presumption great, may be by law made a matter of discretion, or may be forbidden; but in all other cases admission to bail is a constitutional right.—*People vs. Tinder*, 19 Cal., p. 539.

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) unless on presentment or indictment of a Grand Jury; and, in any trial in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due pro-

Personal rights, and rights of property.

cess of law; nor shall private property be taken for public use without just compensation.

**NOTE—GRAND JURY.**—The provision of law that exceptions to the Grand Jury must be made at a particular time is constitutional.—*People vs. Magallones*, 15 Cal., p. 426. The 273d Section of the Criminal Code, providing that where the accused is indicted under a wrong name, and he gives his true name when arraigned, it shall be so entered on the minutes, and the accused tried under his true name is not in violation of this section.—*People vs. Kelly*, 6 Cal., p. 210.

**RIGHT OF COUNSEL.**—If in a criminal case the Court imposes upon counsel against their consent a limitation of time for argument before the jury, it is done at the risk of a new trial, if it be shown by the uncontradicted affidavits of counsel for the prisoner that the prisoner was deprived by the limitation of the opportunity of a full defense.—*People vs. Keenan*, 13 Cal., p. 581. Counsel in cases have the right to read from law books in illustration of their argument to the jury. *People vs. Anderson*, July T., 1872.

**TWICE IN JEOPARDY.**—Jeopardy attaches when a party is once placed upon his trial before a competent Court and jury upon a valid indictment, and if the party be acquitted by the verdict of the jury he cannot be held to answer again for the same offense, no matter by what mistakes or errors on the part of the Court, jury, or prosecution the acquittal was obtained. So, too, if the jury be discharged without legal necessity or consent from rendering a verdict, the party cannot again be put upon trial.—*People vs. Webb*, 38 Cal., p. 722. If the defendant is acquitted by reason of such a variance between the indictment and proof that a conviction was legally impossible, he has not been "in jeopardy."—*People vs. McNealy*, 17 Cal., p. 333.

**EMINENT DOMAIN.**—The right of eminent domain is inherent in Government; it is one of the attributes of sovereignty.—*Gilmer vs. Lime Point*, 18 Cal., p. 229. The term "property," as applied to lands, embraces all titles, legal or equitable, perfect or imperfect.—*Teschemaker vs. Thompson*, 18 Cal., p. 11. Public use—defined to be a use which concerns the whole community, as distinguished from one which concerns only a particular individual or a particular number of individuals.—*Gilmer vs. Lime Point*, 18 Cal., p. 229. The question of the public character of railroads and of their necessity for public use is a political one, and rests much if not entirely in the sound discretion of

the Legislature.—*Contra Costa R. R. Co. vs. Moss*, 23 Cal., p. 323. The Legislature alone determines the question as to whether a railroad will or will not be a public benefit.—*Napa Valley R. R. Co. vs. Napa County*, 30 Cal., p. 435. Whether a given road will subserve the public need is a question for the Legislature and not for the Courts.—*Sherman vs. Buick*, 32 Cal., p. 255. The Legislature has the power to pass laws for the opening of "private roads."—*Sherman vs. Buick*, 32 Cal., p. 241. Private property cannot be taken for public use unless ample means of remuneration are provided.—*McCann vs. Sierra Co.*, 7 Cal., p. 121; *San Francisco vs. Scott*, 4 Cal., p. 114. The Legislature may declare that in ascertaining what is a just compensation to be paid to the owner of land taken for a railroad the benefit which may result to the remaining land of the same parcel shall be set off in satisfaction or part satisfaction of the particular land taken.—*S. F. and Alameda and Stockton R. R. Co. vs. Caldwell*, 31 Cal., p. 367. The provision that "just compensation" be made only requires that a certain and adequate remedy be provided by which the owner can obtain his compensation without unreasonable delay.—*Gilmer vs. Lime Point*, 18 Cal., p. 229. Private property cannot be taken for public use unless compensation precede or accompany the taking.—*Gillan vs. Hutchinson*, 16 Cal., p. 153. Compensation for land taken by a county for public use must precede or accompany the taking.—*Johnson vs. Alameda Co.*, 14 Cal., p. 106. Private property cannot be taken from the owner for public use until compensation is paid or secured him, and such compensation must be made within a short period or the privilege of taking the property under the condemnation will be waived.—*Bensley vs. Mountain Lake Water Company*, 13 Cal., p. 306. The provision which requires payment for private property taken for public use does not apply where the property is destroyed to prevent the spreading of fire.—*Surrocco vs. Geary*, 3 Cal., p. 69; *Dunbar vs. Alcalde of S. F.*, 1 Cal., p. 355. The Legislature may confer the right to enter upon land pending the proceedings for condemnation.—*Fox vs. Western Pacific R. R. Co.*, 31 Cal., p. 538. The Legislature may prescribe the proceedings by which the taking of land for public use shall be effected, and the time at which, in view of the mode adopted, the taking shall be deemed complete.—*Fox vs. Western Pacific R. R. Co.*, 31 Cal., p. 538. Land is not taken for "public use" until the last act pre-

scribed by the mode of condemnation required to transfer the title is performed.—*Fox vs. Western Pacific R. Co.*, 31 Cal., p. 538.

Liberty of  
speech and  
press, and  
law of  
libel.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Popular  
assemblies

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.

Uniform-  
ity of gen-  
eral laws.

SEC. 11. All laws of a general nature shall have a uniform operation.

NOTE.—Laws may be absolute, or may depend upon contingency, etc.—*Blanding vs. Burr*, 13 Cal., p. 343. An Act to remedy the failure on the part of a tax collector to publish the names of the owners, etc., cannot be defeated upon the ground that it is not uniform in its operation. Such an Act is not “general,” but “special.”—*Moore vs. Patch*, 12 Cal., p. 265. The Legislature may pass a special law directing a Court to transfer an indictment for murder pending therein to another district for trial. The word “uniform” in this section does not mean “universal.” The section intends simply that the effect of all laws of a general nature shall be the same upon all persons who stand in the same relation to the law. The Legislature may deny to one man a privilege extended to another man without infringing the Constitution. It is only infringed in this respect when a privilege extended to one is denied to another on substantially the same facts.—*Smith vs. Judge Twelfth Dist. Court*, 17 Cal., p. 547. Separate fee bills may be passed for each county.—*Ryan v. Johnson*, 5 Cal., p. 86.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace; and, in time of war, no appropriation for a standing army shall be for a longer time than two years.

Military power.

SEC. 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

Quartering of soldiers.

SEC. 14. Representation shall be apportioned according to population.

Representation.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

Imprisonment for debt.

NOTE.—A sum ordered to be paid pending a divorce suit for counsel fees, etc., is not a debt within the meaning of the Constitution.—*Ex Parte Perkins*, 18 Cal., p. 60. In a suit to recover money received by a person as agent, such person cannot be arrested without showing fraudulent conduct on his part, or a demand upon him by the principal and a refusal by him to pay.—In the matter of *Holdforth*, 1 Cal., p. 438; see, also, *Soule vs. Hayward*, 1 Cal., p. 345.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Laws prohibited.

NOTE.—Obligation of contracts.—*San Francisco vs. Beideman*, 17 Cal., p. 443; *McCauley vs. Brooks*, 16 Cal., p. 11; *Montgomery vs. Kasson*, 16 Cal., p. 189; *McDaniel vs. Yuba County*, 14 Cal., p. 444; *Thornton vs. Hooper*, 14 Cal., p. 9; *Robinson vs. Magee*, 9 Cal., p. 81; *People vs. Woods*, 7 Cal., p. 579; *Dewey vs. Lambier*, 7 Cal., p. 347; *Stafford vs. Lick*, 7 Cal., p. 479; *Hunsaker vs. Borden*, 5 Cal., p. 288; *Smith vs. Morse*, 2 Cal., p. 524. There is no difference in the inviolability of a contract between the grant of property to an individual and a like grant to a municipal corporation.—*Grogan vs. San Francisco*, 18 Cal., p. 590. A legislative grant is an executed contract; it cannot be destroyed nor the estate divested by any subsequent legislative enactment.—*Grogan vs. San Francisco*, 18 Cal., p. 590. If, when a judgment is

rendered, judicial sales are absolute and before a sale under the judgment takes place a law is passed allowing time for redemption, such law does not impair the obligation of contracts.—*Moore vs. Martin*, 38 Cal., p. 428. The Act of 1858 (Stats. 1858, p. 345), which provides that a person ousted from the possession of land in an action at law by a person claiming title under a foreign grant, which shall thereafter be rejected or so located as not to include the land recovered, may have his action against the plaintiff in the former action and the person in possession of the land, to recover back the possession of the land, together with the rents and profits thereof from the time he was so ousted, etc. In *Rich vs. Maples*, 33 Cal., p. 107, it was held that this Act was unconstitutional. The "Settlers Act" of 1856 held unconstitutional.—*Billings vs. Hall*, 7 Cal., p. 1. Statute of Limitations. Part of eleventh section of Act of 1856 (Stats. 1856, p. 56,) declared unconstitutional.—*Lathrop vs. Mills*, 19 Cal., p. 513. An Act of the Legislature divesting the title of the purchaser of property previously mortgaged by his grantor, by a foreclosure suit in which the mortgagor was alone defendant, would not be constitutional.—*Skinner vs. Buck*, 29 Cal., p. 253. An Act denying the right of sale under execution for the enforcement of a contract would probably be a vital assault upon the obligation of the contract; but a repeal of the right of redemption does not impair the obligation of the contract. The right to redeem is no part of the contract.—*Tuolumne Redemption Co. vs. Sedgewick*, 15 Cal., p. 515. The grant of a ferry, bridge, or road franchise does not carry with it a restriction upon the granting power to make similar grants to other grantees, though the last grant decreases the value of the first.—*Indian Cañon Road Co. vs. Robinson*, 13 Cal., p. 519. Funding Act. *Sharp vs. Contra Costa Co.*, 34 Cal., p. 291. The provision in a funding Act making it the duty of the county authorities to levy a certain rate of taxes annually as a Sinking Fund, enters into the contract, and cannot be repealed.—*English vs. Supervisors of Sacramento*, 19 Cal., p. 172. In *McDonald vs. Maddux*, 11 Cal., p. 187, it was held that the Act of 1854, to fund the debt of Sacramento County, and which forbade the redemption of any warrants which accrued prior to a certain date, was valid. If the right of the holder of county warrants to payment thereof has been fixed by presentation, there being money for such payment then in the Treasury, he cannot be divested of that right by a subsequent Act of the Legislature.—*Laforge vs.*

Magee, 6 Cal., p. 650. An Act creating a Board of Commissioners to examine into the legality of all claims and demands outstanding against a county, and for funding the same, and which declares that no such demand or claim shall be a legal claim against the county unless it is presented to and allowed by the Commissioners, is in this last respect unconstitutional. A creditor of a county cannot be compelled to accept another and an essentially different mode of payment from that provided by the laws in force at the time he became such creditor.—Rose vs. Estudillo, 39 Cal., p. 274; citing McCauley vs. Brooks, 16 Cal., p. 11; People vs. Bond, 10 Cal., p. 566. An Act authorizing a county to fund outstanding warrants which are not to draw interest, and to make the bonds given in exchange therefor bear interest, is valid.—Chapman vs. Morris, 28 Cal., p. 393.

SEC. 17. Foreigners who are or who may hereafter became bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens.

Rights of  
foreigners.

NOTE.—This section gives bona fide resident aliens certain rights which may be enlarged but which cannot be abridged by the Legislature.—State vs. Rogers, 13 Cal., p. 159. This section only removes the common law disability from aliens who are bona fide residents within the State.—Norris vs. Hoyt, 18 Cal., p. 217.

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

Slavery  
prohibited.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but for probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Search  
warrants.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be con-

Treason  
defined,  
and how  
punished.

victed of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

Popular  
rights  
retained by  
the people;

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 22. The Legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years.

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## ARTICLE II.

### RIGHT OF SUFFRAGE.

SECTION 1. Who are or may be electors.

2. Privileges of electors.
3. Militia duty, when not to be performed by electors.
4. Residence of voters, gained or lost.
5. Who are not electors.
6. Election by ballot.

Who are or  
may be  
electors.

SECTION 1. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirteenth day of May, eighteen hundred and forty-eight, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law; *provided*, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians, or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.

NOTE.—Soldiers' veto cases.—Bourland vs. Hildreth, 26 Cal., p. 162; Day vs. Jones, 31 Cal., p. 261.

Privileges  
of electors.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest



on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Militia duty, when not to be performed by electors.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

Residence of voters, gained or lost.

NOTE.—The mere residence or sojourn of a soldier in a county does not make him a citizen. Such residence or sojourn neither creates nor destroys citizenship, but leaves the political status where it was before.—Orman vs. Riley, 15 Cal., p. 48.

SEC. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

Who are not electors

SEC. 6. All elections by the people shall be by ballot.

Election by ballot.

### ARTICLE III.

#### DISTRIBUTION OF POWERS.

SECTION 1. Three separate departments.

SECTION 1. The powers of the Government of the State of California shall be divided into three separate departments: the Legislative, the Executive, and Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

Three separate departments.

NOTE.—The Legislature cannot exercise judicial functions. That portion of the Act prescribing that no injunction shall be issued against the Commission-

ers for the sale of the State's interest within the water line of San Francisco held invalid.—*Guy vs. Hermance*, 5 Cal., p. 73. The Legislature has not the power to legalize pleadings substantially defective without first requiring them to be amended.—*People vs. Mariposa Co.*, 31 Cal., p. 196. An Act of the Legislature granting a new trial or reopening a judgment in a litigated action between individuals would be an assumption of judicial powers and hence void—but an Act granting a new trial or reopening a judgment in favor of the people, is merely the consent of the people that either may be done and is valid.—*People vs. Frisbie*, 26 Cal., p. 137. An Act conferring upon Boards of Supervisors the power to try a contest in relation to the office of County Judge is unconstitutional.—*Stone vs. Elkins*, 24 Cal., p. 125. The Act of the Legislature directing the Supervisors of San Francisco to audit and allow the claim of a judgment creditor is not judicial in its character, and is not unconstitutional, for the Legislature can as well direct in such a matter as in any other of municipal regulation.—*O'Donnel vs. Supervisors of San Francisco*, 11 Cal., p. 206. Of this Article of the Constitution, says Justice Sanderson, delivering the opinion of the Court in *People vs. Provines*, 34 Cal., p. 532:

“Our only remaining duty in connection with this case is to declare what we consider to be the true meaning and scope of the Third Article of the Constitution.

“We understand the Constitution to have been formed for the purpose of establishing a *State Government*; and we here use the term ‘State Government’ in contradistinction to local, or to county and municipal governments. But by this we do not intend to be understood to say that local governments are not within the general plan of the Constitution, for such governments are necessary incidents to all forms of government—using that term in its most enlarged and popular sense—in use among civilized nations. What we mean to be understood as saying, is that the Constitution does not, of itself—*ex proprio vigore*—create or establish any local or municipal governments; but, assuming that such governments will be required, provides that they shall be created and established by the Legislature, and there drops the subject. ‘The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State.’—Sec. 4, Art. XI. ‘It shall be the duty of the Legislature to provide for

the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.'—Sec. 37, Art. IV. 'Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.'—Sec. 9, Art. XI. These provisions show very clearly that the creation and regulation of local and subordinate governments, such as county, city, and town governments, is not attempted in the Constitution; and that the whole subject of local and subordinate governments is, by that instrument, turned over to one branch of the Government, which it provides and defines, with certain admonitions only for its guidance. When, therefore, the Constitution is speaking of the 'powers of Government,' and engaged in the work of distributing them to different departments and securing absolute independence to each department by providing that each shall be worked and managed by a different set or class of individuals, of what Government is it talking? Certainly not of town, city, village, or county governments, which it does not undertake to organize, which are not being established, but are to be established hereafter by a body which the Constitution is at the time creating and organizing. Obviously it is talking about the government upon which it is at work, and it is the powers of that government alone which it is declaring, distributing, and guarding; that is to say, the State Government, as contradistinguished from those which are to be hereafter created by legislative will, merely, as the incidents and auxiliaries of the former. The departments, therefore, of which it speaks, and in respect to which it provides that no person employed in one shall be employed in either of the other two, are the Departments of the State Government, as expressly defined and limited in the Constitution; and its meaning is that no member of the Legislative Department, as there defined, shall at the same time be a member of the Executive or Judicial Departments, as there defined, and *vice versa*. That is to say, no judicial officer shall be Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, or Surveyor General, all of whom, and none others, in the sense of the Third Article of the Constitution, belong to and constitute the Executive Department of the Government; or a member of

the Senate or Assembly, which two bodies, and none other, in the sense of the Third Article of the Constitution, constitute the Legislative Department. So of each officer of the Executive Department—he cannot belong to the Judicial or Legislative Department. That is to say, he can hold no judicial office, nor the office of Senator or member of the Assembly. And so of Senators and members of the Assembly—they can hold no judicial or executive offices comprised within the Executive and Judicial Departments, as defined in Articles V and VI.

“In short, the Third Article of the Constitution means that the powers of the *State* Government, not the local governments thereafter to be created by the Legislature, shall be divided into three departments, and that the members of one department shall have no part or lot in the management of the affairs of either of the other departments, ‘except in the cases hereinafter expressly directed or permitted.’

“That such is the true meaning is further apparent from the mere order and arrangement of the several parts of the Constitution. It is divided into separate Articles. Each Article treats, in the main, of a particular subject, to the exclusion of other matters, which subject is stated at the head of the Article; thus the First Article is entitled ‘Declaration of Rights;’ the second, ‘Right of Suffrage;’ the third, ‘Distribution of Powers;’ the fourth, ‘Legislative Department;’ the fifth, ‘Executive Department;’ the sixth, ‘Judicial Department;’ and so on to the end. From this arrangement alone it is apparent that the Legislative, Executive, and Judicial Departments created and restricted in the Third Article are the identical departments, and none other, separately provided for in the immediately succeeding Articles numbered Four, Five, and Six. Article Third provides that there shall be three departments, giving to each its appropriate name. Articles Four, Five, and Six continue the subject by organizing them under the names already adopted, and prescribing their several functions.”

In the *Provines* case, the distinguished jurist who delivered the opinion of the Court collates, examines, and for the Court disapproves and overrules, upon this topic, the following cases: *Burgoyne vs. Supervisors of San Francisco*, 5 Cal., p. 19; *Exline vs. Smith*, 5 Cal., p. 112; *Dickey vs. Hurlburt*, 5 Cal., p. 343; *Thompson vs. Williams*, 6 Cal., p. 88; *Tuolumne Co. vs. Stanislaus Co.*, 6 Cal., p. 440; *Phelan vs. San Francisco*, 6 Cal., p. 531; *Sanderson's Case*, 30 Cal., p. 160. The

duties or powers of any department, not by the Constitution disposed of or distributed to some particular officers of that department, are left to the disposal of the Legislature.—*Ross vs. Whitman*, 6 Cal., p. 362. This Article does not place either department of the State Government above the law, nor make either independent of the other.—*McCauley vs. Brooks*, 16 Cal., p. 11.

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ARTICLE IV.

LEGISLATIVE DEPARTMENT.

- SECTION 1. Senate and Assembly, and enacting clause of laws.
2. Sessions of the Legislature.
  3. Election and term of Assemblymen.
  4. Qualifications of Legislators.
  5. Election and term of Senators.
  6. Number and classes of Senators.
  7. Number of Senators, when increased.
  8. Organization of Legislative Houses.
  9. What number constitutes a quorum.
  10. Rules for their government, and expulsions.
  11. Each House to keep a Journal.
  12. Members privileged from arrest and summons.
  13. Vacancies, how filled.
  14. Open doors, and secret sessions.
  15. Adjournments, how long and where to.
  16. Origin and passage of bills.
  17. Bills to be approved by the Governor or returned vetoed; passage over the veto.
  18. Assembly to present, and Senate to try articles of impeachment.
  19. What officers liable to impeachment. Judgment in what.
  20. Member ineligible to office created during his term of office.
  21. Persons holding lucrative offices under the United States Government, etc., ineligible to office under State Government. Proviso.
  22. Embezzlement or defalcation of public funds by officer. Penalty.
  23. Public moneys and accounts, how disposed of and kept, and published with laws.
  24. Compensation, how fixed.
  25. Title of laws; how revised and amended.
  26. Divorces shall not be granted by Legislature.
  27. Lotteries prohibited.
  28. Census, when and how taken. Number of members.
  29. Apportionment of Legislators.

- SECTION 30. Congressional, Senatorial, and Assembly Districts.
31. Corporations to be formed under general laws.
  32. Dues of corporations, and individual liability therefor.
  33. What are corporations. Their powers and duties.
  34. Banks of deposit authorized.
  35. Banks of circulation prohibited.
  36. Individual liability of corporators for debt.
  37. Organization of municipal corporations.
  38. Legislative elections to be viva voce.
  39. Amendments to Article IV not to affect official incumbency.

Senate and  
Assembly,  
and enact-  
ing clause  
of laws.

SECTION 1. The Legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

NOTE.—The Legislature has the power to declare who shall be competent to testify, and the power to regulate the production of evidence in the Courts of this State.—*People vs. Brady*, 40 Cal., p. 198. In this case *The People vs. Washington*; 36 Cal., p. 658, was reviewed and overruled. Congress has no authority to legislate concerning the rules of evidence in State Courts, nor to affix conditions upon which those rules are to be applied and enforced.—*Duffy vs. Hobson*, 40 Cal., p. 240. The Legislature may provide a punishment for counterfeiting money.—*People vs. White*, 34 Cal., p. 705. A State Legislature cannot confer jurisdiction upon Federal Courts, or prescribe the means or mode of its exercise.—*Greely vs. Townsend*, 25 Cal., p. 613. Power of a Legislature to delegate its authority, discussed in *Ex Parte Shrader*, 33 Cal., p. 279. The legislative department represents the mass of political powers. It is no further controlled as to its powers or mode of their exercise than by the restrictions of the Constitution. It may enact laws in its own form, and give to them such effect to be worked out in such a way and by such means as it chooses to prescribe. It may provide that laws shall go into effect at one time or another, absolutely or on condition upon certain terms or in a certain event, or without regard to future events. It may make local laws depend for effect upon the will of all the voters of a locality, or upon the will of a majority, or upon the assent of a few.—*Hobart vs. Supervisors of Butte Co.*, 17 Cal., p.

23. If a law is passed providing that certain acts may be done upon the contingency of a vote of the electors of a certain district, the vote upon such a proposition is not an act of legislation but simply an event upon the happening of which the law is to take effect.—*Robinson vs. Bidwell*, 22 Cal., p. 879. The Legislature can delegate the power to the voters of a county to select a county seat.—*Upham vs. Supervisors*, 8 Cal., p. 378. The Legislature may authorize the transfer of convicts to private individuals, and may lease the labor of future convicts.—*State vs. McCauley*, 15 Cal., p. 429. The record of a judgment of another State, if certified in accordance with the Act of Congress, is admissible in evidence in this State. The Legislature has the constitutional power to require a less amount of proof than is required by the Act of Congress.—*Whitwell vs. Barbier*, 7 Cal., p. 54. In the passage of an Act the Legislature may refer to an Act unconstitutional in itself to indicate its will in respect to a constitutional purpose.—*People vs. Bircham*, 12 Cal., p. 50.

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than one hundred and twenty days.

Sessions  
of the  
Legislature

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Wednesday in September, unless otherwise ordered by the Legislature, and their term of office shall be two years.

Election  
and term of  
Assembly-  
men.

SEC. 4. Senators and members of Assembly shall be duly qualified electors in the respective counties and districts which they represent.

Qualifica-  
tions of  
Legislators

SEC. 5. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly; and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State and of the county or district for which he shall be chosen one year next before his election.

Election  
and term of  
Senators.

Number  
and classes  
of Senators.

SEC. 6. The number of Senators shall not be less than one third, nor more than one half, of that of the members of the Assembly; and at the first session of the Legislature after this section takes effect, the Senators shall be divided by lot, as equally as may be, into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen biennially.

Number of  
Senators,  
when  
increased.

SEC. 7. When the number of Senators is increased they shall be apportioned by lot, so as to keep the two classes as nearly equal in number as possible.

Organiza-  
tion of  
Legislative  
Houses.

SEC. 8. Each House shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

What  
number  
constitutes  
a quorum.

SEC. 9. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Rules for  
their  
govern-  
ment, and  
expulsions

SEC. 10. Each House shall determine the rule of its own proceedings, and may, with the concurrence of two thirds of all the members elected, expel a member.

Each  
House to  
keep a  
Journal.

SEC. 11. Each House shall keep a Journal of its own proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the Journal.

Members  
privileged  
from arrest  
and  
summons.

SEC. 12. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

Vacancies,  
how filled.

SEC. 13. When vacancies occur in either House, the Governor, or the person exercising the functions of the



Governor, shall issue writs of election to fill such vacancies.

SEC. 14. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy. Open doors and secret sessions.

SEC. 15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting. Adjournments, how long and where to.

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one House may be amended in the other. Origin and passage of bills.

SEC. 17. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it, but if not he shall return it, with his objections, to the House in which it originated, which shall enter the same upon the Journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return. Bills to be approved by the Governor, etc.

NOTE.—The ten days given the Governor in which to return a bill must be computed by excluding the day on which the bill was presented to the Governor, and the *Sundays* that may intervene.—Price vs. Whitman, 8 Cal., p. 412. In computing the ten days within which a bill may be returned by the Governor, the day on which the bill was presented to the Governor must be excluded from the computation.—Iron Mountain Co. vs. Haight, 39 Cal., p. 540. An adjournment of either House from day to day is not such an adjournment as would prevent the Governor from returning a bill with his objections. If on the last day on which the bill can be returned the House has adjourned for the day, the bill should be placed beyond the Executive control

by delivery to the President, Secretary, or other proper officer of the House, or it becomes a law.—Harpending vs. Haight, 39 Cal., p. 189.

Impeachment.

SEC. 18. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

What officers liable to impeachment, etc.

SEC. 19. The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Surveyor General, Justices of the Supreme Court, and Judges of the District Court, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such a manner as the Legislature may provide.

Member ineligible to office created during his term of office.

SEC. 20. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

Persons holding lucrative offices under the United States Government, etc.

SEC. 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia to which there is attached no annual salary, or local officers and Postmasters, whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

NOTE.—The word "eligible" in this section means capable of being chosen;—the subject of selection—or the choice; and the term "compensation" means the income of the office—not its profits.—Searcy vs. Grow, 15 Cal., p. 117. The Federal office of Surveyor General

is a "lucrative office," and the office of Controller is an "office of profit."—*Melony vs. Whitman*, 10 Cal., p. 38.  
*Quere*—Whether the place of Inspector of Customs is a "lucrative office" within the constitutional meaning of that term.—*Saunders vs. Haynes*, 13 Cal., p. 145; see, also, *People vs. Turner*, 20 Cal., p. 142.

**SEC. 22.** No person who shall be convicted of the embezzlement or defalcation of the public funds of this State shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement or defalcation as a felony.

Embezzlement or defalcation of public funds by officer.  
 Penalty.

**SEC. 23.** No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the Legislature.

Public money and accounts, how disposed of and kept, etc.

**NOTE.**—To an appropriation nothing more is requisite than a designation of the amount and the Fund out of which it shall be paid; it is not necessary that funds to meet the same should be in the Treasury.—*McCauley vs. Brooks*, 16 Cal., p. 11.

**SEC. 24.** The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public Treasury; but no increase of the compensation shall take effect during the term for which the members of either House shall have been elected.

Compensation, how fixed.

**SEC. 25.** Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title; and no law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be reenacted and published at length.

Title of laws, etc.

**NOTE.**—This section is directory, and does not defeat Acts passed in violation of it.—*Pierpont vs. Crouch*, 10 Cal., p. 315; *Ex Parte Newman*, 9 Cal., p. 502; *Washington vs. Page*, 4 Cal., p. 388; *De Witt vs. S. F.*, 2 Cal., p. 289. The amendment of a statute operates as an absolute repeal of the old statute or section amended.—*Billings vs. Harvey*, 6 Cal., p. 381.

**Divorces.** SEC. 26. No divorce shall be granted by the Legislature.

**Lotteries.** SEC. 27. No lottery shall be allowed by this State, nor shall the sale of lottery tickets be allowed.

**Census.** SEC. 28. The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, in the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States, in the year one thousand eight hundred and fifty and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

**Apportionment of Legislators** SEC. 29. The number of Senators and members of Assembly shall, at the first session of the Legislature holden after the enumerations herein provided for are made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of Assembly shall not be less than twenty-four, nor more than thirty-six, until the number of inhabitants within this State shall amount to one hundred thousand; and, after that period, in such ratio that the whole number of members of Assembly shall never be less than thirty nor more than eighty.

**Congressional, Senatorial, and Assembly Districts.** SEC. 30. When a Congressional, Senatorial, or Assembly District shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county shall be divided in forming a Congressional, Senatorial, or Assembly District so as to attach one portion of a county to another county; but the Legislature may divide each county into as many Congressional, Senatorial, or Assembly Districts as such county may by apportionment be entitled to.

NOTE.—The Legislature may change Assembly districts so as to join two counties in one district.—*People vs. Hill*, 7 Cal., p. 97.

SEC. 31. Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes. All general laws and special Acts passed pursuant to this section may be altered from time to time, or repealed.

Corporations.

NOTE.—The power of the Legislature to change the name of a corporation by special statute was considered, but not decided, in *The Pacific Bank vs. De Ro*, 37 Cal., p. 538. Exclusive franchises may be conferred by the Legislature upon persons or corporations, and no restriction upon this power is imposed by the Constitution, except as to the particular privileges specified therein. Hence it was held that the Act of May 3d, 1852, granting to Allen & Burnham the exclusive right to maintain a telegraph between Sacramento and San Francisco was constitutional.—*Cal. State Tel. Co. vs. Alta Tel. Co.*, 22 Cal., p. 398.

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Dues of corporations, etc.

SEC. 33. The term corporations, as used in this Article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all Courts, in like cases as natural persons.

What are corporations.

Their powers and duties.

SEC. 34. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed, under general laws, for the deposit of gold and silver; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

Banks of deposit authorised

SEC. 35. The Legislature of this State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper to circulate as money.

Banks of circulation prohibited.

Individual liability of corporators for debt.

SEC. 36. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities.

NOTE.—This section is not self executing; legislation is necessary to give it effect. The Legislature may not say that a stockholder shall not be liable for any of the debts of a corporation, but may say that he shall be liable for a portion and what that portion shall be. The same rate of liability must be imposed upon all stockholders, and the law must operate alike upon all corporations.—French vs. Teschemaker, 24 Cal., p. 539; same questions discussed in Robinson vs. Bidwell, 22 Cal., p. 379. An Act authorizing the formation of corporations without attaching an individual liability to the stockholders would be void.—French vs. Teschemaker, 24 Cal., p. 539. Persons contracting with a corporation may stipulate to waive the individual liability of the stockholders, and such stipulation is valid. French vs. Teschemaker, 24 Cal., p. 560; per Crocker, J., in Robinson vs. Bidwell, 22 Cal., p. 379.

Organization of municipal corporations.

SEC. 37. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

NOTE.—The Legislature may authorize municipal corporations to pay claims equitable and just in themselves, but which are invalid in law.—Blanding vs. Burr, 13 Cal., p. 343. The Legislature may at pleasure increase, restrict, or repeal the powers of a municipal corporation, saving only vested rights.—Blanding vs. Burr, 13 Cal., p. 343. There is no constitutional inhibition against incorporating a portion of the inhabitants of a county as a city, or creating a county out of the territory of a city.—People vs. Hill, 7 Cal., p. 97.

Legislative elections to be viva voce.

SEC. 38. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the journal.

Amendments to Article IV not to affect official incumbency.

SEC. 39. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to Article IV by the Legislature of eighteen hundred and sixty-one, no officer shall be suspended

or superseded thereby until the election and qualification of the several officers provided for in said amendments.

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ARTICLE V.

EXECUTIVE DEPARTMENT.

- SECTION 1. Governor is vested with supreme executive power.
2. Election of Governor and term of office.
  3. Qualifications and eligibility to the office.
  4. Returns of, and counting, the votes for Governor.
  5. Governor to be Commander in Chief.
  6. Transact all executive business.
  7. See to execution of the laws.
  8. Fill vacancies not otherwise provided for.
  9. Convene special sessions of the Legislature.
  10. Executive messages.
  11. Adjourn the Legislature when the Houses disagree.
  12. Must not be Governor and hold other office.
  13. Reprieves and pardons for offenses.
  14. Keeper of "*The great seal of the State of California.*"
  15. Sign and *seal* grants and commissions.
  16. Of the Lieutenant Governor.
  17. When powers of Governor devolve on the Lieutenant Governor.
  18. Election and terms of other State officers.
  19. Duties of Secretary of State.
  20. Election of State officers for first term by Legislature; thereafter, as in Section 18 provided.
  21. Compensation. Not to be increased or diminished.

SECTION 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of California.

Governor is vested with supreme executive power.

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the first Monday in December subsequent to his election, and until his successor is elected and qualified.

Election of Governor and term of office.

SEC. 3. No person shall be eligible to the office of Governor (except at the first election) who has not been

Qualifications and eligibility to the office.

a citizen of the United States and a resident of this State two years next preceding the election, and attained the age of twenty-five years at the time of said election.

Returns of and counting the votes for Governor.

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in presence of both Houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both Houses, choose one of said persons so having an equal and the highest number of votes, for Governor.

Governor Commander in Chief.

SEC. 5. The Governor shall be Commander in Chief of the militia, the army, and navy of this State.

Transact executive business.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

See to execution of the laws.

SEC. 7. He shall see that the laws are faithfully executed.

Fill vacancies not otherwise provided for.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

NOTE.—The power vested by this section applies only to vacancies occurring under circumstances when the original appointing (or electing) power cannot act, and is limited by the period when the original power can act.—Casserly vs. Fitch, 1 Cal., p. 519. The Governor has no power to appoint, under this section, when there is a person in possession of the office expressly authorized by statute or the Constitution to discharge its duties temporarily, until the power upon whom the duty of election or appointment is devolved can act.—



People vs. Tilton, 37 Cal., p. 614. This section only applies to those cases of vacancies for filling which no other mode is provided "by the Constitution and laws," and has no application to vacancies the mode of filling which is provided by the law of 1851.—Wetherbee vs. Cazneau, 20 Cal., p. 503. Whether a failure to elect a successor leaves an office vacant at the expiration of the term, in the sense of this section, was considered, but not fully decided, in People vs. Parker, 37 Cal., p. 639. The failure of a Controller elect to qualify creates no vacancy in the office; it is only in cases where there is no incumbent to hold over that the law permits the Executive to appoint.—Melony vs. Whitman, 10 Cal., p. 38. The power to fill a vacancy and the power to fill an office are distinct in their nature.—Aylett vs. Langdon, 8 Cal., p. 1. If the appointment to an office is vested in the Governor, with the advice and consent of the Senate, and the term of the incumbent expires during a recess of the Legislature, and the Governor appoints a successor, such appointment vests in the appointee a right to hold the office for the full term, subject only to be defeated by the non-concurrence of the Senate.—People vs. Mizner, 7 Cal., p. 519.

**SEC. 9.** He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

Convene special sessions of the Legislature.

**SEC. 10.** He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

Executive messages.

**SEC. 11** In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

Adjourn Legislature when the Houses disagree.

**SEC. 12.** No person shall, while holding any office under the United States, or this State, exercise the office of Governor, except as hereinafter expressly provided.

Not to hold other office.

**SEC. 13.** The Governor shall have the power to grant reprieves and pardons after conviction, for all offenses,

Reprieves  
and  
pardons for  
offenses.

except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

Keeper of  
the great  
seal.

SEC. 14. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially and shall be called "The Great Seal of the State of California."

Sign and  
seal grants  
and com-  
missions.

SEC. 15. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Of the  
Lieutenant  
Governor.

SEC. 16. A Lieutenant Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office, and his qualifications of eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease.

SEC. 17. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or

absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander in Chief of all the military forces of the State.

When powers of Governor devolve on Lieutenant Governor.

SEC. 18. A Secretary of State, a Controller, a Treasurer, an Attorney General, and a Surveyor General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor, and whose term of office shall be the same as the Governor.

Election and terms of other State officers.

NOTE.—All elective officers connected with the Executive Department of the State Government must be elected at the same time.—Brooks vs. Melony, 15 Cal., p. 58; reversing in part People vs. Whitman, 10 Cal., p. 116.

SEC. 19. The Secretary of State shall keep a fair record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law; and in order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article V by the Legislature of eighteen hundred and sixty-one, no officer shall be superseded or suspended thereby, until the election and qualification of the several officers provided for in said amendments.

Duties of Secretary of State.

SEC. 20. The Controller, Treasurer, Attorney General, and Surveyor General, shall be chosen by joint vote of the two Houses of the Legislature at their first session under this Constitution, and thereafter shall be elected at the same time and places, and in the same manner, as the Governor and Lieutenant Governor.

Election of State officers for first term.

SEC. 21. The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, and Surveyor General, shall each, at stated times during

Compensation.

their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive for his own use any fees for the performance of his official duties.

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ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. Judicial powers.

2. Supreme Court, how constituted. Three Justices necessary to transact business.
3. Election of Supreme Court Justices.
4. Jurisdiction of the Supreme Court.
5. Judicial Districts—Judges' terms—absence.
6. Jurisdiction of District Courts.
7. County Courts. Judges. Terms and powers of the Court and Probate Judge of San Francisco.
8. Jurisdiction of County Court.
9. Justice of the Peace, their powers and duties.
10. Jurisdiction of Recorders, and other inferior Municipal Courts.
11. Clerk of the Supreme Court, County Clerk, and other officers. Their powers and duties.
12. Terms of the Courts, how to be fixed.
13. Fees and perquisites of Judicial officers.
14. Decisions of the Supreme Court to be published.
15. Salaries of Judicial officers, how fixed.
16. Ineligibility of Judges for other offices.
17. Charge of Judges to Juries.
18. Style of "Process."
19. Amendments to Article IV not to affect official incumbency.

Judicial  
powers.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, in Probate Courts, and in Justices of the Peace, and in such Recorders' and other inferior Courts as the Legislature may establish in any incorporated city or town.

NOTE.—The decisions relative to the jurisdiction of the various Courts are fully annotated in the Code of Civil Procedure, Sections 33 to 133, and are for that reason omitted in this Code.—See Note to Preamble. The Courts may go behind the record evidence of a

statute, and inquire whether it was passed or approved in accordance with the Constitution.—*Fowler vs. Pierce*, 2 Cal., p. 165; see *Sherman vs. Story*, 30 Cal., p. 253. A law authorizing five per cent damages to be taxed against the losing party in litigated cases in San Francisco is constitutional.—*Corwin vs. Ward*, 35 Cal., p. 195. Each branch of the Judicial Department has its functions assigned to it, and each is beyond the control of either of the other departments.—*Parsons vs. Tuolumne Water Co.*, 5 Cal., p. 43.

SEC. 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, excepting such business as may be done at chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment.

Supreme Court.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at special elections to be provided by law, at which elections no officer other than judicial shall be elected, except a Superintendent of Public Instruction. The first election for Justices of the Supreme Court shall be held in the year eighteen hundred and sixty-three. The Justices shall hold their offices for the term of ten years from the first day of January next after their election, except those elected at the first election, who, at their first meeting shall so classify themselves by lot that one Justice shall go out of office every two years. The Justice having the shortest term to serve shall be the Chief Justice.

Election of Supreme Court Justices.

NOTE.—A constitutional officer cannot be divested of his office otherwise than as prescribed by the Constitution.—*People vs. Wells*, 2 Cal., p. 198. The absence of a Judge from the State is not such a vacancy as can be supplied by the Executive under legislative authority; nor is an Act authorizing the Governor to appoint a Judge of the Supreme Court during the absence of one of the Judges from the State, constitutional.—*People vs. Wells*, 2 Cal., p. 610.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law which involve the title or possession of real estate, or

Jurisdiction of the Supreme Court.

the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars; also in all cases arising in the Probate Courts; and also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court, or any County Court in the State, or before any Judge of said Courts.

NOTE.—Half pilotage is not a toll within the meaning of this section.—Harrison vs. Green, 18 Cal., p. 94.

Judicial  
Districts.

SEC. 5. The State shall be divided, by the Legislature of eighteen hundred and sixty-three, into fourteen Judicial Districts, subject to such alteration, from time to time, by a two thirds vote of all the members elected to both Houses, as the public good may require; in each of which there shall be a District Court, and for each of which a District Judge shall be elected by the qualified electors of the district at the special Judicial elections to be held as provided for the election of Justices of the Supreme Court, by section three of this Article. The District Judges shall hold their offices for the term of six years from the first day of January next after their election. The Legislature shall have no power to grant leave of absence to a Judicial officer; and any such officer who shall absent himself from the State for upwards of thirty consecutive days shall be deemed to have forfeited his office.

Judges'  
terms.

Absence.

NOTE.—The number of districts may be increased beyond fourteen by a two-third vote of the Legislature. People vs. Sassovich, 29 Cal., p. 480. An election to fill a vacancy in the office of District Judge is invalid unless held under the Governor's proclamation.—McKune vs. Weller, 11 Cal., p. 49. The Legislature may

provide for filling the office of District Judge during the interval between the day of election and the qualification of his successor by authorizing him to hold until his successor is elected and qualified.—*Brodie vs. Campbell*, 17 Cal., p. 11. A District Judge elected by the people on the occasion of a vacancy in the office is elected for the full term of six years, and this though the proclamation of the Governor is for the unexpired term.—*People vs. Burbank*, 12 Cal., p. 378.

SEC. 6. The District Courts shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars; and also in all criminal cases not otherwise provided for. The District Courts and their Judges shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody, in their respective districts.

Jurisdiction of District Courts.

NOTE.—The Legislature may authorize the District Judge of one district to hold a Court in another district.—*People vs. McCauley*, 1 Cal., p. 379.

SEC. 7. There shall be in each of the organized counties of the State a County Court, for each of which a County Judge shall be elected by the qualified electors of the county, at the special judicial election to be held as provided for the election of Justices of the Supreme Court by section three of this Article. The County Judges shall hold their offices for the term of four years from the first day of January next after their election. Said Courts shall also have power to issue naturalization papers. In the City and County of San Francisco the Legislature may separate the office of Probate Judge from that of County Judge, and may provide for the election of a Probate Judge, who shall hold his office for the term of four years.

County Courts.

Judges.

Terms and powers of Court and Probate Judge of San Francisco.

NOTE.—The office of County Judge is not a county office within the meaning of an Act entitled "An Act

to amend an Act to regulate elections," passed March 23, 1850; consequently the Board of Supervisors cannot order a special election to fill a vacancy in such an office.—*People vs. Martin*, 12 Cal., p. 409. An election to fill a vacancy in the office of County Judge is a special election, and the Governor's proclamation is essential to its validity.—*Westbrook vs. Rosborough*, 14 Cal., p. 180. The tenure of office of a County Judge is four years. An Act organizing a new county and providing for the election of a County Judge for two years is void *pro tanto*, but an election held under the Act is good, and entitles the incumbent to the office for four years.—*Westbrook vs. Rosborough*, 14 Cal., p. 180; see, also, *People vs. Templeton*, 12 Cal., p. 394.

Jurisdiction of County Court.

SEC. 8. The County Court shall have original jurisdiction of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and of all such special cases and proceedings as are not otherwise provided for; and also such criminal jurisdiction as the Legislature may prescribe; they shall also have appellate jurisdiction in all cases arising in Courts held by Justices of the Peace and Recorders, and in such inferior Courts as may be established in pursuance of section one of this Article, in their respective counties. The County Judges shall also hold, in their several counties, Probate Court, and perform such duties as Probate Judges as may be prescribed by law. The County Courts and their Judges shall also have power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties.

Justices of the Peace.

SEC. 9. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and fix by law their powers, duties, and responsibilities; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record. The Supreme Court, the District Courts, County Courts, the Probate Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

Jurisdiction of Recorders and other inferior municipal Courts.

SEC. 10. The Legislature shall fix by law the jurisdiction of any Recorder's or other inferior municipal Court



which may be established in pursuance of section one of this Article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 11. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties. The Legislature may also provide for the appointment by the several District Courts of one or more Commissioners in the several counties of their respective districts, with authority to perform Chamber business of the Judges of the District Courts and County Courts, and also to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law.

Clerks of Court.

Commissioners.

SEC. 12. The times and places of holding the terms of the several Courts of record shall be provided for by law.

Terms of the Courts.

SEC. 13. No judicial officer, except Justices of the Peace, Recorders, and Commissioners shall receive to his own use any fees or perquisites of office.

Fees of Judicial officers.

SEC. 14. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person.

Decisions of Supreme Court.

SEC. 15. The Justices of the Supreme Court, District Judges, and County Judges, shall severally, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished, during the term for which they shall have been elected; *provided*, that County Judges shall be paid out of the County Treasury of their respective counties.

Salaries of Judicial officers.

NOTE.—Judicial salaries cannot be increased or reduced during the term of the incumbent.—Johnson vs. Duden, 18 Cal., p. 696. The provisions of this sec-

tion do not exempt the officers named from the necessity of an appropriation by the Legislature.—Myers vs. English, 9 Cal., p. 341.

Ineligibility of Judges for other offices.

SEC. 16. The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

Charge of Judges to juries.

SEC. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

NOTE.—The Judge cannot express an opinion upon the weight of evidence, but may state the evidence and declare the law.—People vs. King, 27 Cal., p. 509; Miller vs. Stewart, 24 Cal., p. 505; Pico vs. Stevens, 18 Cal., p. 376; People vs. Ybarra, 17 Cal., p. 166; People vs. Dick, 34 Cal., p. 663; id., 22 Cal., p. 213; id., 34 Cal., p. 663. The policy of the prohibition against charging juries in matters of fact is discussed and questioned in People vs. Taylor, 36 Cal., p. 255.

Style of "Process."

SEC. 18. The style of all process shall be: "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

Amendments to Article VI not to affect official incumbency.

SEC. 19. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article VI, by the Legislature of eighteen hundred and sixty-one, no officer shall be superseded thereby, nor shall the organization of the several Courts be changed thereby, until the election and qualification of the several officers provided for in said amendments.

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## ARTICLE VII.

### MILITIA.

- SECTION 1. Organization and disciplining of the militia.
2. Officers, how elected or appointed.
  3. Governor to call out the militia.

Organization and discipline.

SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia, in such manner

as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

SEC. 2. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. Officers.

SEC. 3. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions. Governor to call out the militia.

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### ARTICLE VIII.

#### STATE DEBTS.

SECTION 1. Restriction on the legislative power to contract debts.

SECTION 1. The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each Judicial District, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. Restriction on the legislative power to contract debts.

**NOTE.**—This Article is mandatory. All debts contracted in violation of it are void, and the Legislature has no power to levy a tax or to appropriate money to pay them. Claims outstanding contracted in defiance of this Article can be legalized by being submitted to a vote of the people, and in no other manner.—*Nougues vs. Douglass*, 7 Cal., p. 65. This Article applies only to the State as a corporation, and does not prevent the State authorizing counties or municipal corporations to create debts or the Legislature authorizing the local authorities to aid in the construction of railroads.—*Pat-tison vs. Board of Supervisors of Yuba*, 13 Cal., p. 175. This Article was intended to prevent the State from running into debt and to keep her expenditures within her revenues. As to what is the creation of a debt within the meaning of this Article, see *State vs. McCauley*, 15 Cal., p. 429. Appropriations, when they do not create a State debt.—*People v. Pacheco*, 27 Cal., p. 209; *Koppikus vs. State Capitol Commissioners*, 16 Cal., p. 248. The power to determine when a state of war exists is vested in the Legislative Department, and its determination is not subject to review.—*People vs. Pacheco*, 27 Cal., p. 221. The Political Department is the sole judge of the existence of war or insurrection, and when the Legislature declares either to exist, its action is final and conclusive.—*Franklin vs. Board of Examiners*, 23 Cal., p. 173. No limitation is imposed upon the amount of State indebtedness which may be created by the Legislature in case of war, to repel invasion, or suppress insurrection.—*Franklin vs. Board of Examiners*, 23 Cal., p. 173.

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## ARTICLE IX.

### EDUCATION.

- SECTION 1.** Superintendent of Public Instruction.
2. Duties of Legislature to promote and encourage education. Proceeds of school lands. School Fund.
  3. To provide a system of common schools.
  4. University Fund—how created, managed, and applied.

Superintendent of  
Public  
Instruction

**SECTION 1.** A Superintendent of Public Instruction shall, at the special election for judicial officers to be held in the year eighteen hundred and sixty-three, and every four years thereafter, at such special elections, be elected by the qualified voters of the State, and shall

enter upon the duties of his office on the first day of December next after his election.

SEC. 2. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual Fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

Legisla-  
ture to  
promote  
education.

School  
lands.

School  
Fund.

NOTE.—Crosby vs. Lyon, 37 Cal., p. 243, was a proceeding under the 49th title of the Practice Act, to obtain a writ of mandamus, commenced by the Superintendent of Common Schools for the County of Placer against the Auditor of that county, to compel him to apportion to the School Fund of that county certain moneys derived from certain taxes levied by the Board of Supervisors upon the property of the Central Pacific Railroad Company of California for the support of common schools.

The petition shows that for the year 1868 the Board of Supervisors levied a tax of eighteen cents upon each one hundred dollars of taxable property in the county for the support of common schools. That under this levy there was collected of the Central Pacific Railroad Company of California the sum of one thousand and thirty-four dollars and twelve cents, which is now in the Treasury of the county. That it is the duty of the respondent to apportion this sum to the School Fund, yet he neglects and refuses to do so.

The respondent admits the refusal, and justifies it under the provisions of the 18th section of "An Act to authorize the County of Placer to subscribe to the capital stock of the Central Pacific Railroad Company of

California, and to provide for the payment of the same, and other matters relating thereto" (Stats. 1863, p. 145), which, as he claims, requires him to apportion the money in question to the Railroad Fund for which that Act provides.

That Act authorizes the county to subscribe and take two hundred and fifty thousand dollars of the stock of the railroad company, to be paid for in the bonds of the county. It then makes provisions for the issuing and redemption of the bonds, and to that end creates what is denominated a "Railroad Fund," to which all the dividends, issues, and profits arising from such subscription, "*together with the taxes that may be paid by said company to said county from time to time,*" are apportioned, until such time as the bonds shall be redeemed, after which one half of the dividends, issues, and profits is to be apportioned to the School Fund and the other to the General Fund.—Sec. 18.

Assuming that "the taxes" here spoken of include *all* taxes to be paid by the railroad company, irrespective of the purpose for which they may have been levied, it is argued that the statute, so far as it operates upon the school tax, is repugnant to the Constitution. The point is founded chiefly upon Section 2 of Article IX of the Constitution, which provides that "the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual Fund, the interest of which, together with all the rents of the unsold lands, and *such other* means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State."

The clause of this section upon which the petitioner especially relies is the following: "And *such other means* as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State."

The second section of the Ninth Article of our Constitution is copied from the second section of the Tenth Article of the original Constitution of Iowa, which is the third section of the Ninth Article of the amended Constitution of that State.

The meaning of the clause in question arose in the case of *The District Township of the City of Dubuque vs. The County Judge of Dubuque County, 13 Iowa, p. 250*, and it was held that the expression "and such other means as the General Assembly may provide," *ex vi termini*, included any other funds than those previously named which the Legislature might provide, and therefore included funds to be raised by taxation. And it was accordingly held that the money in question must be distributed according to another provision of the amended Constitution of that State, which required that the money subject to the support and maintenance of common schools should be distributed to the school districts in proportion to the number of youths between the ages of five and twenty-one years; and further, that a provision of the School Law, which authorized the distribution upon a different principle, was unconstitutional. This case determines that whenever the Legislature raises a fund, by taxation or otherwise, for the support of common schools, it cannot, by contemporaneous or subsequent legislation, divert the fund to a different purpose; and we think no other rational view can be taken of the language of the Constitution. It is suggested, however, on the part of the respondent, that the "means" intended were not such as might be raised by annual taxation, but such as might be made continuing and permanent, like the funds already specified. We are unable to perceive any warrant for such a construction, nor can we adopt it without adding words which the Constitution does not contain. The language is very broad—"such other means as the Legislature may provide"—and we are not authorized to limit its scope. Under the School Law, the Legislature provided that the Boards of Supervisors should have power to levy a tax, not to exceed a specified sum, for the support of common schools in their respective counties, and, by force of the constitutional provision in question, the money, when collected, becomes "inviolably appropriated" to school purposes. We can draw no other conclusion from the language which has been employed in the Constitution. If, however, it be insisted that

the Fund cannot be deemed a School Fund, because, under the Act of 1863, it is expressly devoted to another purpose, the proposition becomes obnoxious to another objection. Section 13, Article XI, of the Constitution, provides that "taxation shall be equal and uniform throughout the State," and if no part of the tax paid by the railroad company is to be deemed a part of the school tax of the county, the result would be that the company would be exempt from a tax to which all the other property in the county would be subject for the support of schools.

Common  
Schools.

SEC. 3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public Fund during such neglect.

University  
Fund.

SEC. 4. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent Fund, the interest on which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

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## ARTICLE X.

### MODE OF AMENDING AND REVISING THE CONSTITUTION.

- SECTION 1. Proposal of amendments. Submission to the people.
2. By what authority and how a Constitutional Convention is called and acts, and how its acts are ratified.



SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their Journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of the Constitution.

Amend-  
ments.

SEC. 2. And if at any time two thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature. The Constitution that may have been agreed upon and adopted by such Convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection. Each voter shall express his opinion by depositing in the ballot box a ticket, whereon shall be written or printed the words "For the New Constitution," or "Against the New Constitution." The returns of such election shall, in such manner as the Convention

Constitutional  
Convention.

shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.

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## ARTICLE XI.

### MISCELLANEOUS PROVISIONS.

#### SECTION 1. Seat of Government.

2. Duelling disqualifies for office.
3. The oath of office.
4. Legislature to provide a system of uniform county and town governments.
5. Boards of County Supervisors.
6. All officers not otherwise provided for elected by the people or appointed as Legislature directs.
7. Duration not declared by Constitution to be fixed by law.
8. Fiscal year.
9. Provision for support of county and other inferior officers.
10. Credit of the State not to be given or loaned.
11. Suits against the State.
12. Marriage contracts to be valid.
13. Taxation shall be equal and uniform.
14. Separate property of wife defined and provided for.
15. Homesteads of heads of families to be provided for.
16. Perpetuities not to be allowed.
17. Giving or taking a bribe disqualifies for office.
18. Rights of suffrage to be protected, and improper persons excluded therefrom: from the jury and from the ballot box.
19. Residence not affected by absence on the business of the State or Federal Government.
20. Plurality vote makes a choice.
21. Publication of laws, decrees, etc., in English.

Seat of  
Government.

SECTION 1. The first session of the Legislature shall be held at the Pueblo de San José, which place shall be the permanent seat of government until removed by law; *provided*, however, that two thirds of all the members

elected to each House of the Legislature shall concur in the passage of such law.

NOTE.—The Act of February 4th, 1851, removing the Capital to Vallejo, declared valid.—*People vs. Bigler*, 5 Cal., p. 23.

SEC. 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as a second or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit or to enjoy the right of suffrage under this Constitution. Duelling.

SEC. 3. Members of the Legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: Oath of office.

“I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability.”

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

NOTE.—Attorneys.—Test oaths not obnoxious to this section.—*Cohen vs. Wright*, 22 Cal., p. 293. The terms “office” and “public trust,” as used in this section, have relation only to such duties and responsibilities as are of a public nature.—*Ex Parte Yale*, 24 Cal., p. 241.

SEC. 4. The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State. County and town governments.

NOTE.—The clause that “the Legislature shall provide a system of county \* \* governments, which shall be as nearly as practicable uniform,” etc., is directory, and the authority to determine what measure of uniformity is practicable is with the Legislature.—*People vs. Lake Co.*, 33 Cal., p. 487. The Legislature may create a Board of Commissioners to ascertain and settle

and report the amount due from one county to another upon any claim, and may compel the Supervisors of the county indebted to levy a tax to pay the amount reported due.—*People vs. Alameda Co.*, 26 Cal., p. 641.

County  
Supervisors.

SEC. 5. The Legislature shall have power to provide for the election of a Board of Supervisors in each county, and these Supervisors shall jointly and individually perform such duties as may be prescribed by law.

NOTE.—The Legislature may confer upon the Board of Supervisors of one county the power to lay out, open, and maintain a road in another county.—*People vs. Lake County*, 33 Cal., p. 487. In *Christy vs. Board of Supervisors of Sacramento County*, 39 Cal., p. 3, it was held by Justice Crockett that:

“When the Constitution declares an office to be elective, it cannot, of course, be filled in any other mode than that provided by the instrument itself. We have repeatedly recognized this proposition as applied to Assessors and Collectors of taxes.—*People vs. Hastings*, 29 Cal., p. 449; *People vs. Kelsey*, 34 id., p. 470. But where an office has been filled in the method prescribed by the Constitution, no reason is perceived why the Legislature may not extend the term of the incumbent; provided the whole term, when extended, does not exceed the time limited by the Constitution—Section 7, Article XI, of which, provides that ‘when the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office, not fixed by this Constitution, ever exceed four years.’ An officer duly elected by the people, and holding his office for a term extended by the Legislature within the constitutional limitation of time, cannot, in any just sense, be held to hold, not as an elected officer, but as an appointee of the Legislature. It cannot be denied that he was *elected* to the office, and that he would not be the incumbent of it, except for his election. The people have exercised their constitutional right in selecting him for the office, and instead of thwarting the popular will by appointing some one else, the Legislature has rather ratified it by extending his term. The duration of the terms of office, except as limited by the Constitution, is a matter of purely legislative discretion. It may be diminished or extended at the will of the Legislature, within those limits, and his power in no degree trenches on the con-

stitutional right of the people to select the person who is to fill an elective office. The people select the incumbent of the office, but the Legislature has the power to define the duration of the term, provided it is not fixed by the Constitution, and is within the constitutional limitation of four years. If we had any doubt on this point, we should be very reluctant to arrive at a different conclusion, in view of the serious complications which might arise, growing out of past legislation on this subject. The Legislature has so often exercised, unquestioned, the power to prolong the terms of the incumbents of elective officers, that it might result in the most embarrassing perplexities, if all these acts, at this late day, were pronounced to be void. They have repeatedly extended terms of Supervisors, Tax Collectors, Assessors, and all county officers.—Stats. 1858, p. 261; 1862, p. 129; 1863, p. 171; 1859, p. 236; 1861, p. 260; 1859, p. 337; 1863, pp. 406, 387, 24, 506; 1857, p. 281; 1863-4, p. 507; 1867-8, pp. 121, 457. Nothing but an imperious sense of duty, founded on the plainest principles of constitutional construction, would justify us in holding all these acts to be void after this lapse of time. If we had even a grave doubt on the subject, considerations of public policy would impel us to uphold these enactments, if practicable."

SEC. 6. All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Election or appointment of officers.

NOTE.—The Legislature may alter or abridge the term of office of legislative creation.—People vs. Haskell, 5 Cal., p. 357. The place of pilot in the port of San Francisco is an office.—Palmer vs. Woodbury, 14 Cal., p. 43.

SEC. 7. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office not fixed by this Constitution ever exceed four years.

Duration of office.

NOTE.—The power to remove from office is an incident to the power to appoint, and the only way in which the power of removal can be limited is by first fixing the duration of office.—People vs. Hill, 7 Cal., p. 97.

Where the term of an office is fixed by law the Executive cannot remove.—*People vs. Mizner*, 7 Cal., p. 519. The Constitution does not prohibit an office created by the Legislature from continuing over four years, but merely limits the incumbent's term to four years.—*People vs. Stratton*, 28 Cal., p. 382. In *People vs. Middleton*, 28 Cal., p. 603, it was held that the Commissioners of the Funded Debt of San Francisco were not officers within the meaning of this section, and that the term during which they are authorized to act is not limited to four years.

**Fiscal year**      **SEC. 8.** The fiscal year shall commence on the first day of July.

**NOTE.**—An Act legalizing assessments for taxes for the fiscal year ending on the "first day of March" is not void because the fiscal year commences on the first day of July.—*People vs. Todd*, 23 Cal., p. 181.

**Support of county and town officers.**      **SEC. 9.** Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

**Credit of the State not to be given or loaned.**      **SEC. 10.** The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association, or corporation; nor shall the State, directly or indirectly, become a stockholder in any association or corporation.

**NOTE.**—This section does not prohibit the State in time of war from appropriating its funds to aid a corporation in the construction of a railroad to be used by the State for military purposes.—*People vs. Pacheco*, 27 Cal., p. 225. The imposition of a tax and the appropriations of the proceeds to a railroad company to aid in building a railroad in consideration of services to be rendered the State is not a gift or loan of the credit of the State or in aid of a corporation within the meaning of this section.—*People vs. Pacheco*, 27 Cal., p. 225.

**Suits against the State.**      **SEC. 11.** Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

**Marriage contracts.**      **SEC. 12.** No contract of marriage, otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

**SEC. 13.** Taxation shall be equal and uniform throughout the State. All property in the State shall be taxed in proportion to its value, to be ascertained as directed by law; but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated. Taxation.

**NOTE.—ALL PROPERTY MUST BE TAXED.**—Revenue laws exempting private property from taxation are to that extent unconstitutional, and all parts thereof relating to such exemptions must be disregarded.—*People vs. Gerke*, 35 Cal., p. 677. Growing crops are private property, and cannot be exempted from taxation.—*People vs. Gerke*, 35 Cal., p. 677.—See also Note to Section 3607 of this Code.

**LEVY OF TAXES.**—The levy of taxes is a legislative and not a judicial act.—*Hardenburgh vs. Kidd*, 10 Cal., p. 402.

**GENERAL POWERS OF THE LEGISLATURE OVER THE REVENUE.**—The legislative authority is vested with the power of taxation and the authority to determine the objects in favor of which that power shall be exercised.—*People vs. Pacheco*, 27 Cal., p. 209. The only limitation upon the taxing power of the Legislature is found in this section.—*Blanding vs. Burr*, 13 Cal., p. 343. The Legislature cannot by law fix the assessed value of property.—*People vs. Hastings*, 29 Cal., p. 449. In the Legislature is vested the entire control and management of the financial affairs of the State.—*McCauley vs. Brooks*, 16 Cal., p. 11. The power to dispose of the revenue vested in Legislature.—*Myers vs. English*, 9 Cal., p. 34. The power of appropriation which the Legislature can exercise over the State revenue for any purpose, it can also exercise over the revenue of a county, city, or town.—*Blanding vs. Burr*, 13 Cal., p. 343.

**SUBSIDIES.**—For a general discussion of this question, see the *Stockton and Visalia R. R. Co. vs. The City of Stockton*, April Term, 1871; see, also, *Hobart vs. Sups. Butte*, 17 Cal., p. 23; *Lowe vs. Marysville*, 5 Cal., p. 214; *Robinson vs. Bidwell*, 22 Cal., p. 379. It is not essential to the validity of an Act authorizing the issuance of bonds and levying a tax in aid of public improvements that the improvement should be confined to the locality liable on the bonds or taxed to

redeem them.—*Patterson vs. Supervisors of Yuba Co.*, 13 Cal., p. 175. A tax levied in Sacramento County for a wagon road from its eastern boundary line to Carson Valley held valid.—*People vs. Seymour*, 16 Cal., p. 332.

**LICENSE TAXES.**—This section applies only to direct taxation upon property, and does not prohibit the Legislature from enacting license laws. Foreign miners license tax held constitutional.—*People vs. Naglee*, 1 Cal., p. 232. The Legislature may discriminate in the imposition of taxes on certain classes of persons, occupations, etc.—*People vs. Coleman*, 4 Cal., p. 46. The mere fact that a native of China resides in a mining district does not subject him to the payment of foreign miners license tax. A law imposing this tax, under such circumstances merely, would not be constitutional. *Ex Parte Ah Pong*, 19 Cal., p. 106. The Legislature has no power to impose a tax upon bills of lading for the transportation of property from a point within to a point without the State.—*Brumagim vs. Tillinghast*, 18 Cal. p. 265. The passenger stamp tax was in *The People vs. Raymond*, 34 Cal., p. 492, held unconstitutional upon the ground that it was an attempt to regulate commerce. The Board of Supervisors of a city may be empowered to levy a license tax upon the business of a merchant, and an ordinance graduating such tax according to the monthly sales of the merchant is not an unequal tax.—*Sacramento vs. Crocker*, 16 Cal., p. 119.

**STREET ASSESSMENTS.**—The last clause of this section has no application to assessments for street work.—*Chambers vs. Satterlee*, 40 Cal., p. 497. "Assessment" and "taxation" distinguished.—*Taylor vs. Palmer*, 31 Cal., p. 240. An assessment for street work is not "taxation."—*Chambers vs. Satterlee*, 40 Cal., p. 497; *Burnett vs. Sacramento City*, 12 Cal., p. 76. A statute authorizing the assessment of a portion of the expenses for widening a street upon lots situated on a cross street is constitutional.—*Appeal of Piper*, 32 Cal., p. 530. An Act imposing a personal liability for a street assessment held unconstitutional in *Taylor vs. Palmer*, 21 Cal., p. 240; but see *Walsh vs. Matthews*, 29 Cal, p. 123.

**FEES NOT A TAX.**—The percentage allowed the Gauger of San Francisco is not a tax but a fee to a public officer; nor is the Act creating the office an Act imposing duties on imports.—*Addison vs. Saulnier*, 19 Cal., p. 82.



**ANNUAL ASSESSMENTS NOT REQUIRED.**—The Constitution does not require annual assessments. Property may be taxed for several years at a rate based upon a particular valuation.—*Kelsey vs. Trustees of Nevada*, 18 Cal., p. 629.

**REVENUE OFFICERS.**—The office of Sheriff and Tax Collector may be united in the same hands. The Legislature may deprive the Sheriff of the office of Tax Collector before the expiration of his term. Foreign miners license is not a tax in the sense involved in the duties of Tax Collector, and therefore it is competent for the Legislature to authorize Boards of Supervisors to *appoint* Collectors of such licenses.—*Attorney General vs. Squires*, 14 Cal., p. 12. The Legislature cannot by law transfer the duties of the office of Tax Collector from a person elected as such to one who was not so elected, but may provide for the election of a person as Tax Collector, who may enter upon the discharge of the duties of the office before the expiration of the term of a Tax Collector elected under the law as it previously existed.—*Mills vs. Sargent*, 36 Cal., p. 379. The Legislature may devolve the office and duties of Tax Collector upon the incumbent of any other elective office; but the law by which this is done must precede the election of such officer.—*People vs. Kelsey*, 34 Cal., p. 470. The Legislature may divest an officer of an *ex officio* office by a repeal of the law, but cannot transfer an *ex officio* office, which under the Constitution is required to be filled by election, to the incumbent of another office elected before the transfer is sought to be made.—*People vs. Kelsey*, 34 Cal., p. 470. The Sheriff acquires his authority to act as Tax Collector not from the Constitution, but in those counties where he so acts, under statutes which invest the person elected to the office of Sheriff with another and distinct office—that of Tax Collector—and though he is elected in name Sheriff, he is in fact also elected to the office of Tax Collector, and the two offices are distinct.—*Lathrop vs. Brittain*, 30 Cal., p. 680. The authority of Assessors is limited to districts within which they are elected, and they have no power to assess property situated without the limits of such districts.—*People vs. Placerville and S. V. R. R. Co.*, 34 Cal., p. 656. An assessment made by an Assessor elected by the electors of the City and County of Sacramento, is not a sufficient basis for the levy of a tax in the City of Sacramento for city purposes.—*People vs. Hastings*, 29 Cal., p. 449. A law is constitutional which provides that a collector of taxes shall pay part of the fees allowed him by law

into the General Fund in the County Treasury.—*Ream vs. Siskiyou*, 36 Cal., p. 620.—See also note to Section 3692 of this Code where the decisions bearing upon the question of taxation have been fully annotated, for which reason they are omitted here.

Separate  
property  
of wife.

SEC. 14. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

NOTE.—The capacity of the wife to hold separate property is created by the Constitution. Her title depends upon the mode of acquisition, and not upon filing an inventory.—*Selover vs. Am. Russ. Com. Co.*, 7 Cal., p. 266. The term "separate property," in this section, is used in its common law sense, and means an estate held both in its use and in its title for the exclusive use of the wife; neither the husband nor the creditor can claim the proceeds of the separate estate, and a law giving either such proceeds would be unconstitutional. *George vs. Ransom*, 15 Cal., p. 322. The word "separate" neither enlarges nor limits the wife's right to the property mentioned, but merely distinguishes it from her common property.—*Dow vs. G. & C. S. M. Co.*, 31 Cal., p. 630. The phrase "and laws shall be passed more clearly defining the rights of the wife in relation \* \* \* to her separate property," refers to the disabilities under which the wife labored at common law, and not to the mode and form in which she may convey her separate property.—*Dow vs. G. & C. S. M. Co.*, 31 Cal., p. 630. Statutes providing that the wife cannot mortgage her separate real estate unless her husband joins in the conveyance, and operating in future, are constitutional.—*Harrison vs. Brown*, 16 Cal., p. 237. A legislative enactment, requiring a deed conveying the separate property of the wife to be signed by the husband as well as the wife, is constitutional.—*Dow vs. G. & C. S. M. Co.*, 31 Cal., p. 630. The Act of April 3d, 1863, validating powers of attorney theretofore made by married women for the sale of their separate estate, was, in *Dentzell vs. Waldie*, 30 Cal., p. 138, held constitutional, upon the ground that it was

within the power of the Legislature to validate and confirm contracts made in good faith, but not in the precise mode prescribed by existing laws.

SEC. 15. The Legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families. Home-  
steads.

NOTE.—An Act making the failure to file for record a declaration of homestead a forfeiture of the homestead right, is not unconstitutional.—Noble vs. Hook, 24 Cal., p. 688.

SEC. 16. No perpetuities shall be allowed except for eleemosynary purposes. Perpetui-  
ties.

SEC. 17. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment. Bribes.

SEC. 18. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice. Suffrage,  
jury, and  
ballot box  
protected.

SEC. 19. Absence from this State on business of the State or of the United States shall not affect the question of residence of any person. Residence.

SEC. 20. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution. Plurality  
vota.

SEC. 21. All laws, decrees, regulations, and provisions which from their nature require publication shall be published in English and Spanish. Publica-  
tion of  
laws, etc.

## ARTICLE XII.

## BOUNDARY.

## SECTION 1. Boundary of the State defined.

Boundary  
of the State  
defined.

SECTION 1. The boundary of the State of California shall be as follows:

Commencing at the point of intersection of forty-second degree of north latitude with the one hundred twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence, running west and along said boundary line, to the Pacific Ocean, and extending therein three English miles; thence, running in a northwesterly direction and following the direction of the Pacific Coast, to the forty-second degree of north latitude; thence, on the line of said forty-second degree of north latitude, to the place of beginning. Also, all the islands, harbors, and bays along and adjacent to the coast.

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 SCHEDULE.
 

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## SECTION 1. Mexican laws in force.

2. Removal of causes.
3. Change of Government.
4. Residence necessary to hold office.
5. Who are voters at the first election.
6. Constitution to be submitted to vote of the people. Election, returns, canvass, and proclamation.
7. Transmission to Congress.

## SECTION 8. Election of officers.

9. Meeting of Legislature.
10. Report of canvassers.
11. Election by Legislature of United States Senator.
12. Application for admission into the Union.
13. Installation of officers.
14. Apportionment of representation.
15. Salaries of State officers till fixed.
16. Eighth Article does not apply to expenditures of the first Legislature.

SECTION 1. All rights, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this Constitution and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if the same had not been adopted.

Mexican  
laws in  
force.

SEC. 2. The Legislature shall provide for the removal of all causes which may be pending when this Constitution goes into effect to Courts created by the same.

Removal  
of causes.

SEC. 3. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no office shall be superseded thereby nor the laws relative to the duties of the several officers be changed until the entering into office of the new officers to be appointed under this Constitution.

Change of  
Government.

SEC. 4. The provisions of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the Legislature at its first session.

Residence  
necessary  
to hold  
office.

SEC. 5. Every citizen of California declared a legal voter by this Constitution, and every citizen of the United States a resident of this State on the day of election, shall be entitled to vote at the first general election under this Constitution, and on the question of the adoption thereof.

Voters at  
the first  
election.

SEC. 6. This Constitution shall be submitted to the people for their ratification or rejection at the general

Constitution to be submitted.

election to be held on Tuesday, the thirteenth day of November next. The Executive of the existing Government of California is hereby requested to issue a proclamation to the people, directing the Prefects of the several districts, or, in case of vacancy, the Sub-Prefects or Senior Judge of First Instance, to cause such election to be held on the day aforesaid in their respective districts.

Election.

The election shall be conducted in the manner which was prescribed for the election of Delegates to this Convention, except that the Prefects, Sub-Prefects, or Senior Judge of First Instance ordering such election in each district shall have power to designate any additional number of places for opening the polls, and that in every place of holding the election a regular poll list shall be kept by the Judges and Inspectors of Election. It shall also be the duty of these Judges and Inspectors of Election, on the day aforesaid, to receive the vote of the electors qualified to vote at such election. Each voter shall express his opinion by depositing in the ballot box a ticket whereon shall be written or printed, "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These Judges and Inspectors shall also receive the votes for the several officers to be voted for at the said election, as herein provided. At the close of the election the Judges and Inspectors shall carefully count

Returns.

each ballot, and forthwith make duplicate returns thereof to the Prefect, Sub-Prefect, or Senior Judge of First Instance, as the case may be, of their respective districts; and said Prefect, Sub-Prefect, or Senior Judge of First Instance shall transmit one of the same, by the most safe and rapid conveyance, to the Secretary of State. Upon the receipt of said returns, or on the tenth day of

Canvass.

December next, if the returns be not sooner received, it shall be the duty of a Board of Canvassers, to consist of the Secretary of State, one of the Judges of the Superior Court, the Prefect, Judge of First Instance, and an Alcalde of the District of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said elec-

tion, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the Executive will also, immediately after ascertaining that the Constitution has been ratified by the people, make proclamation of the fact; and thenceforth this Constitution shall be ordained and established as the Constitution of California.

Proclamation.

SEC. 7. If this Constitution shall be ratified by the people of California, the Executive of the existing Government is hereby requested, immediately after the same shall be ascertained, in the manner herein directed, to cause a fair copy thereof to be forwarded to the President of the United States, in order that he may lay it before the Congress of the United States.

Transmission to Congress.

SEC. 8. At the general election aforesaid, viz: the thirteenth day of November next, there shall be elected a Governor, Lieutenant Governor, members of the Legislature, and also two members of Congress.

Election of officers.

SEC. 9. If this Constitution shall be ratified by the people of California, the Legislature shall assemble at the seat of Government on the fifteenth day of December next; and in order to complete the organization of that body the Senate shall elect a President pro tempore, until the Lieutenant Governor shall be installed into office.

Meeting of Legislature.

SEC. 10. On the organization of the Legislature, it shall be the duty of the Secretary of State to lay before each House a copy of the abstract made by the Board of Canvassers, and, if called for, the original returns of election, in order that each House may judge of the correctness of the report of said Board of Canvassers.

Report of canvassers

SEC. 11. The Legislature, at its first session, shall elect such officers as may be ordered by this Constitution to be elected by that body, and within four days after its organization, proceed to elect two Senators to the Congress of the United States. But no law passed by this Legislature shall take effect until signed by the Governor after his installation into office.

Election of United States Senator.

Application for admission into the Union.

SEC. 12. The Senators and Representatives of the Congress of the United States elected by the Legislature and people of California, as herein directed, shall be furnished with certified copies of this Constitution, when ratified, which they shall lay before the Congress of the United States, requesting, in the name of the people of California, the admission of the State of California into the American Union.

Installation of officers.

SEC. 13. All officers of this State, other than members of the Legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

Apportionment of representation.

SEC. 14. Until the Legislature shall divide the State into counties and Senatorial and Assembly Districts, as directed by this Constitution, the following shall be the apportionment of the two Houses of the Legislature, viz: The Districts of San Diego and Los Angeles shall jointly elect two Senators; the Districts of Santa Barbara and San Luis Obispo shall jointly elect one Senator; the District of Monterey, one Senator; the District of San José, one Senator; the District of San Francisco, two Senators; the District of Sonoma, one Senator; the District of Sacramento, four Senators; and the District of San Joaquin, four Senators. And the District of San Diego shall elect one member of the Assembly; the District of Los Angeles, two members of Assembly; the District of Santa Barbara, two members of Assembly; the District of San Luis Obispo, one member of Assembly; the District of Monterey, two members of Assembly; the District of San José, three members of Assembly; the District of San Francisco, five members of Assembly; the District of Sonoma, two members of Assembly; the District of Sacramento, nine members of Assembly; and the District of San Joaquin, nine members of Assembly.

Salaries of State officers till fixed.

SEC. 15. Until the Legislature shall otherwise direct, in accordance with the provisions of this Constitution, the salary of the Governor shall be ten thousand dollars per annum; and the salary of the Lieutenant Governor



shall be double the pay of a State Senator; and the pay of members of the Legislature shall be sixteen dollars per diem while in attendance, and sixteen dollars for every twenty miles traveled by the usual route from their residences to the place of holding the session of the Legislature, and in returning therefrom. And the Legislature shall fix the salaries of all officers other than those elected by the people at the first election.

SEC. 16. The limitation of the powers of the Legislature contained in Article VIII of this Constitution shall not extend to the first Legislature elected under the same, which is hereby authorized to negotiate for such amount as may be necessary to pay the expenses of the State Government.

Article VIII does not apply to expenditures of the first Legislature.

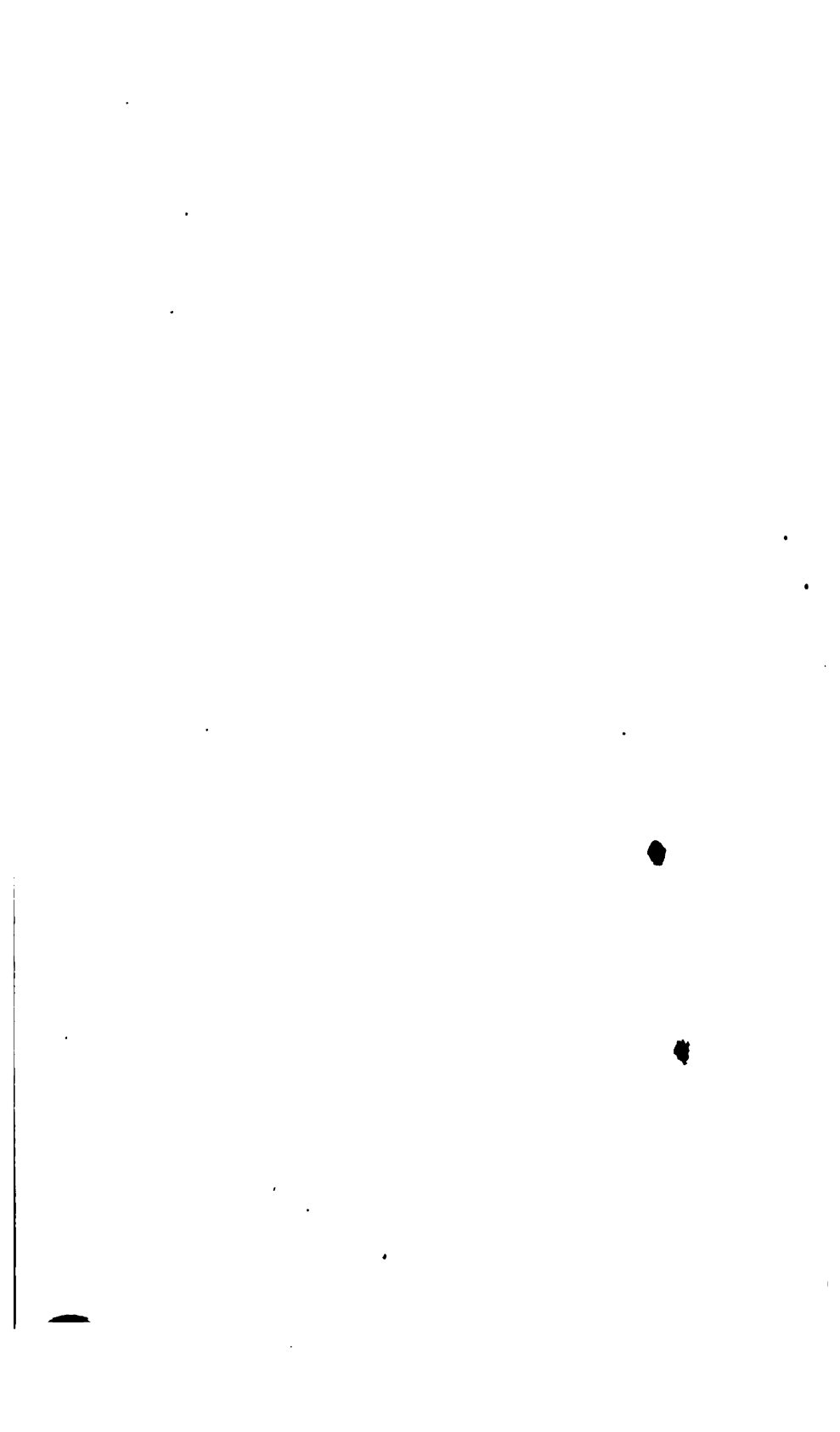
R. SEMPLE,

President, and Delegate from Benicia.

WM. G. MARCY, Secretary.

JOSEPH ARAM,  
CH. T. BOTTS,  
ELAM BROWN,  
ELISHA O. CROSBY,  
JOSE M. COVARUBIAS,  
STEPHEN C. FOSTER,  
PABLO DE LA GUERRA,  
LEWIS DENT,  
KIMBALL H. DIMMICK,  
A. J. ELLIS,  
JOSE ANTO CARRILLO,  
WM. M. GWIN,  
EDW. GILBERT,  
HENRY HILL,  
J. D. HOPPE,  
JOSEPH HOBSON,  
JULIAN HANKS,  
H. W. HALLECK,  
L. W. HASTINGS,  
J. McHENRY HOLLINGSWORTH,  
JAS. McHALL JONES,  
THOMAS O. LARKIN,  
FRANCIS J. LIPPITT,  
BENJ. S. LIPPINCOTT.

BENJ. F. MOORE,  
RODMAN M. PRICE,  
JNO. McDOUGALL,  
MAN'L DOMINGUEZ,  
MYRON NORTON,  
PACIFICUS ORD,  
MIGUEL D. PEDRORENA,  
M. M. M. CARVER,  
ANTONIO MA. PICO,  
JACINTO RODRIGUES,  
HUGH REID,  
J. A. SUTTER,  
JACOB R. SNYDER,  
WINFIELD SCOTT SHERWOOD,  
WILLIAM E. SHANNON,  
ABEL STEARNS,  
P. SANSEVAIN,  
WM. M. STEUART,  
HENRY A. TEFFT,  
M. G. VALLEJO,  
THOS. L. VERMEULE,  
J. P. WALKER,  
O. M. WOZENCRAFT.



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#### NOTE.

In many of the notes to THE POLITICAL CODE it is said that the Acts of 1872, amendatory of Acts existing prior to the adoption of the Code, were *void* under Section 330 of the Political Code. This is an incorrect expression; the statutes so existing, as also the Acts of 1872, amendatory, etc., thereof, constitute the law for all purposes, prior to January 1st, 1873, when the Code goes into effect, and will remain the preëxisting law. The Code taking effect January 1st, 1873, supersedes them at that time, but they are not *void*.—EDS.

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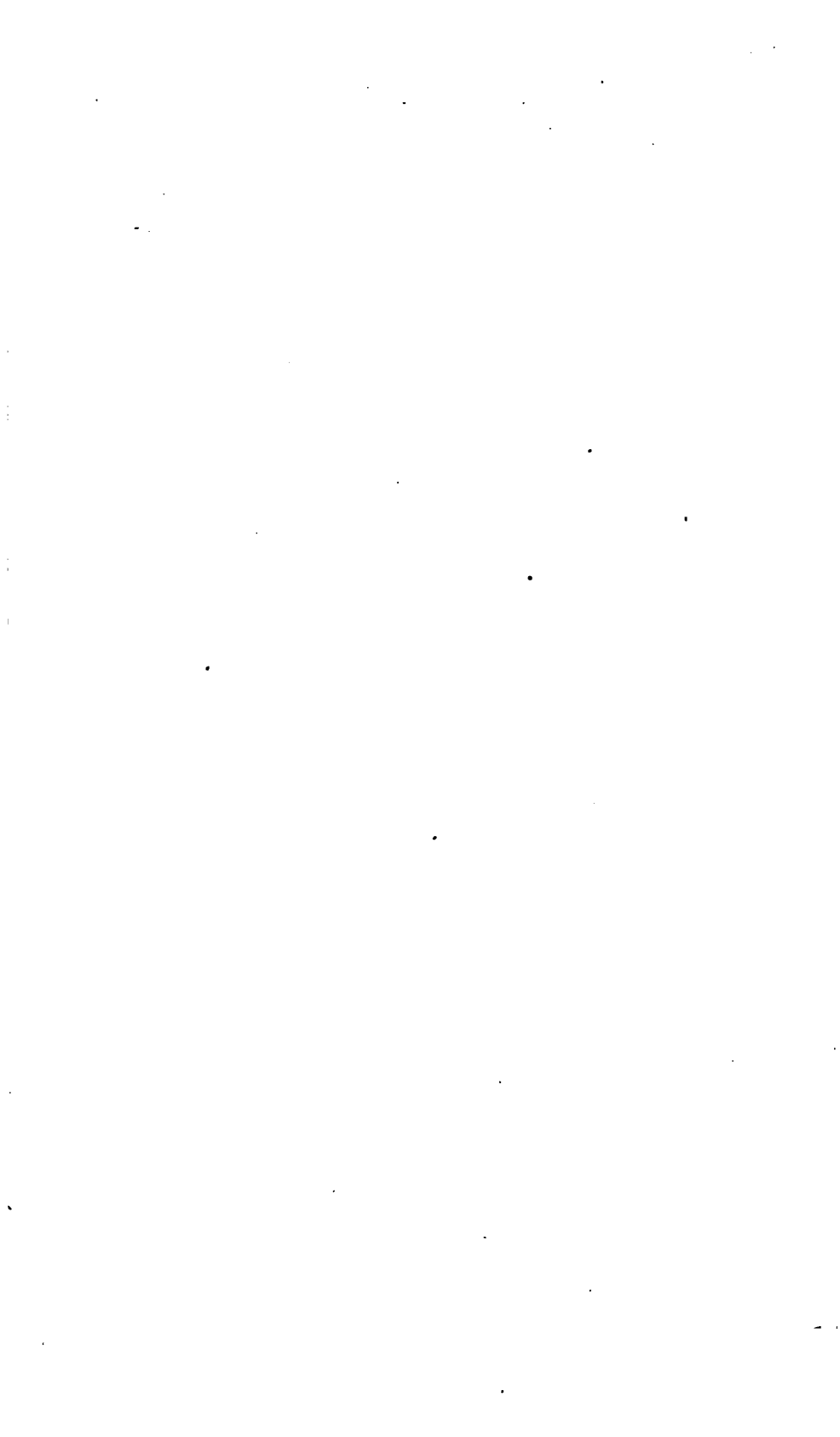
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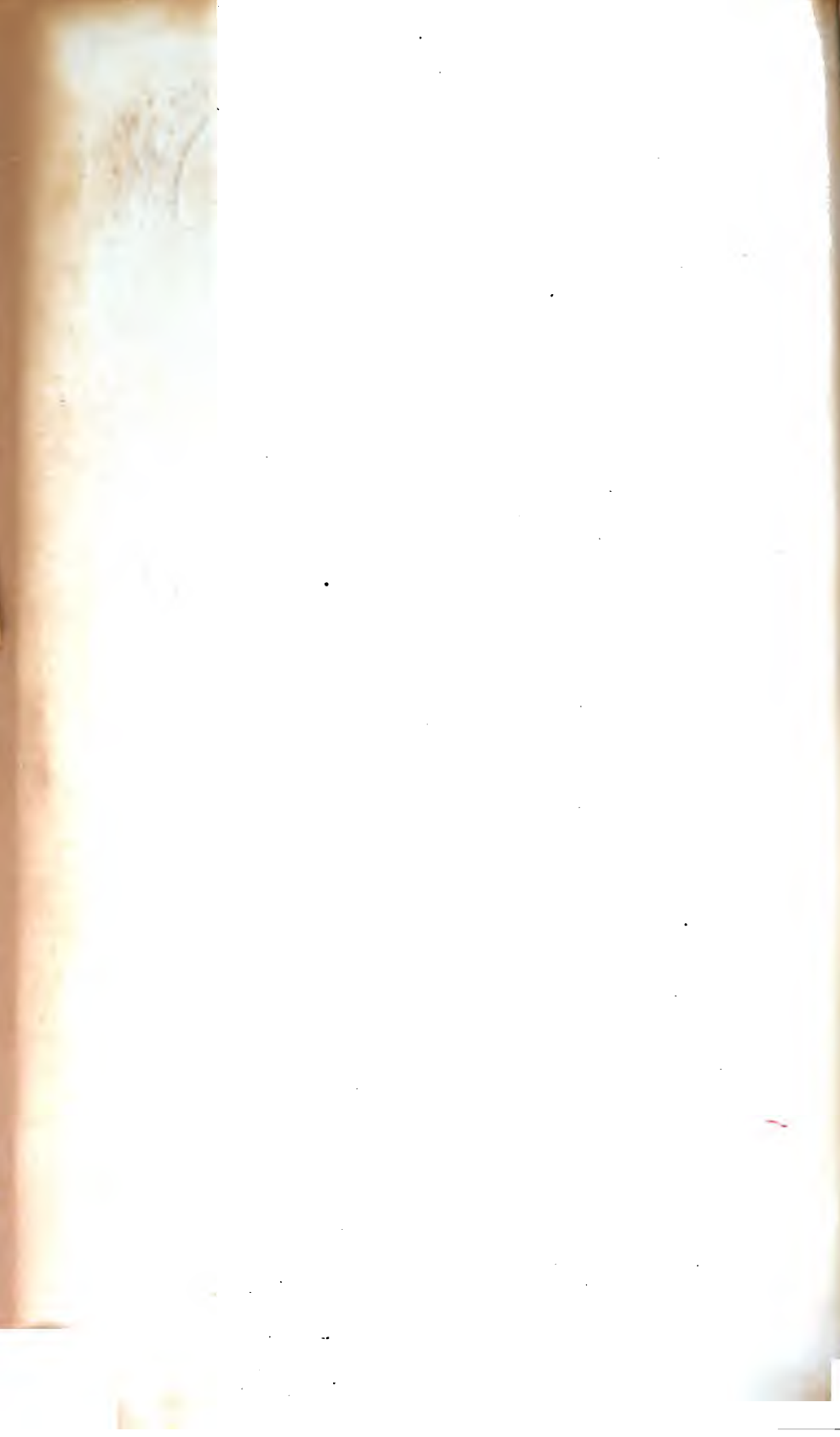
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